

Filed for intro on 11/01/99
SENATE BILL 8001 By
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HOUSE BILL 2 of the Second Extraordinary Session
By Head

AN ACT to enact "The
Comprehensive Tax Reform
Law of 1999" and to amend
Titles 7, 12, 30, 57 and 67.
This act makes
appropriations for fiscal
years 1999-2000 and 2000-
2001 to administer, enforce
and effectuate its purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The title of this act is, and may be cited as, "The Comprehensive Tax Reform Law of 1999".

SECTION 2. Tennessee Code Annotated, Title 67, Chapter 6, Part 3 is amended by adding the following new section:

(a) The sale of food or food products for human consumption shall be exempt from the state portion of the sales and use tax levied by this chapter.

(b) Except as otherwise provided in this section, "food or food products" means any item that is eligible for purchase with food coupons issued by the United States Department of Agriculture pursuant to the Food Stamp Act of 1977 (7 U.S.C. §§ 2011 et seq.) as it may be amended from time to time, regardless of whether the dealer from which the food or food products are purchased is participating in the food stamp program.

(c) As used in this section, "food or food products" does not include items sold for consumption on the premises of the dealer or items sold for immediate consumption off the premises of the dealer. "Items sold for immediate consumption" include, but are not limited to, food or food products in a heated state; sandwiches suitable for immediate consumption; prepared meals, salads and similar delicatessen items sold in a grocery or similar establishment upon which an act of preparation has been performed, including but not limited to cooking, mixing, blending or heating; salad bars; party platters or delicatessen trays; drinks dispensed in or with a cup or glass either by a dealer or on a self-service basis by the consumer; frozen yogurt, ice cream, or ice milk sold in single or individual servings; and all food served by, or sold in or by, restaurants, fast food outlets, carryout shops (such as donut, ice cream, or coffee shops), lunch counters, cafeterias, snack bars, hot dog carts, hotels, caterers, boarding houses, movie theaters, concerts, athletic events, or like places of business.

(d) The exemption provided for in this section shall not apply to sales and use tax levied by any county or incorporated city or town under the provisions of part 7 of this chapter.

SECTION 3. Tennessee Code Annotated, Section 67-6-202, is amended by deleting the language "six percent (6%)" in subsection (a) and by substituting instead the language "three and three-quarters percent (3.75%)".

SECTION 4. Tennessee Code Annotated, Section 67-6-202, is amended by deleting subsection (b) in its entirety.

SECTION 5. Tennessee Code Annotated, Section 67-6-203, is amended by deleting the language "six percent (6%)" in subsection (a) and by substituting instead the language "the tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202".

SECTION 6. Tennessee Code Annotated, Section 67-6-203, is amended by deleting subsection (c) in its entirety.

SECTION 7. Tennessee Code Annotated, Section 67-6-204, is amended by deleting the language "six percent (6%)" wherever it appears and substituting instead the language "the tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202".

SECTION 8. Tennessee Code Annotated, Section 67-6-204, is amended by deleting subsection (d) in its entirety.

SECTION 9. Tennessee Code Annotated, Section 67-6-205, is amended by deleting the language "six percent (6%)" in subsection (a) and by substituting instead the language "the tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202".

SECTION 10. Tennessee Code Annotated, Section 67-6-205, is amended by deleting subsection (b) in its entirety.

SECTION 11. Tennessee Code Annotated, Section 67-6-212(a), is amended by deleting the language "the rate of tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202" and substituting instead "six percent (6%)".

SECTION 12. Tennessee Code Annotated, Section 67-6-216(a), is amended by deleting the words, numbers, punctuation and symbols, "state tax equal to one half (1/2) the rate of tax provided for in § 67-6-202" as they appear in subsection (a) and substituting instead the language "a state tax equal to three percent (3%)".

SECTION 13. Tennessee Code Annotated, Section 67-6-221, is amended by deleting the language "three and one-half percent (3.5%)" in subsection (a) and by substituting instead the language "three and three-quarters percent (3.75%)".

SECTION 14. Tennessee Code Annotated, Section 67-6-221, is amended by deleting the first sentence of subsection (b).

SECTION 15. Tennessee Code Annotated, Title 67, Chapter 6, Part 2, is amended by adding the following new section:

Notwithstanding any other provision of law to the contrary, there is levied a tax at the rate of six percent (6%) of the gross receipts or gross proceeds of each sale at retail of the following:

(1) The sale, rental or charges for any rooms, lodgings, or accommodations furnished to transients by any hotel, inn, tourist court, tourist camp, tourist cabin, motel, or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration. The tax does not apply, however, to rooms, lodgings, or accommodations supplied to the same person for a period of ninety (90) continuous days or more;

(2) Rental of motor vehicles for a period of thirty-one (31) days or less.

SECTION 16. Tennessee Code Annotated, Title 67, Chapter 6, Part 2 is amended by adding the following two new sections:

Section . Notwithstanding any other provision of law to the contrary, the rate of any tax imposed under § 67-6-202, 67-6-205 or 67-6-212 shall be six percent (6%) if such taxes are to be distributed pursuant to § 67-6-103(d).

Section . Notwithstanding any other provision of law to the contrary, the rate of tax levied on the retail sale, use or consumption of tobacco products and alcoholic beverages, for on or off-premises consumption, including distilled spirits, wine and beer, shall be six percent (6%).

SECTION 17. Tennessee Code Annotated, Title 67, Chapter 6, Part 2, is amended by adding the following new section:

It is the sense of the general assembly that the various rates of the state sales and use tax should not be increased except by a bill which has been considered and passed on three different days in each house of the general assembly and on third and final consideration has received the assent of three-fifths of all the members to which each house is entitled under the constitution of this state, when the respective speakers

have signed the bill with the date of such signing appearing in the journal, and when the bill has been approved by the governor or otherwise passed under the provisions of the constitution of this state.

SECTION 18. Tennessee Code Annotated, Section 67-6-702(a), is amended by deleting the language “single article of personal property” wherever it appears in subdivision (a)(1) or subdivision (a)(2) and substituting instead the language “single aircraft, vessel or motor vehicle”. Tennessee Code Annotated, Section 67-6-702(a) is further amended by adding the following new sentence: “The rate of tax levied on food or food products for human consumption shall be the same rate levied on all other goods and services pursuant to this part, notwithstanding the exemption from tax on food or food products for human consumption pursuant to the provisions of title 67, chapter 6, part 3.”

SECTION 19. Tennessee Code Annotated, Section 67-6-702(a), is amended by adding the following new subdivision:

For purposes of this subsection, “vessel” means a vessel as defined by § 69-10-204 that is subject to registration and identification under § 69-10-206. “Motor vehicle” means a motor vehicle as defined by § 55-1-103 that is subject to registration under § 55-3-101(a) for use upon a highway, except “motor vehicle” does not include any mobile home or house trailer as defined in § 55-1-105. Parts or accessories for motor vehicles that are installed at the factory and delivered with the motor vehicle as original equipment and/or parts or accessories for motor vehicles that are installed by the dealer and/or distributor prior to sale, at the time of the sale, or which are included as part of the sales price of the vehicle shall be treated as a part of the motor vehicle. In addition, all necessary parts and equipment installed by a motor vehicle dealer which are essential to the functioning of the motor vehicle or are required to be installed on the motor vehicle prior to sale to the ultimate consumer pursuant to state or federal statutes relating to the lawful use of the motor vehicle shall be treated as a part of the motor vehicle. Motors,

other parts or accessories for vessels, freight, and labor, excluding trailers, shall be treated as part of the vessel in the same manner as parts or accessories for motor vehicles are treated as part of the motor vehicle. Parts or accessories for aircraft shall be treated as part of the aircraft in the same manner as parts or accessories for motor vehicles are treated as part of the motor vehicle.

SECTION 20. Tennessee Code Annotated, Section 67-6-702, is amended by deleting the language “with respect to industrial and farm machinery as defined by § 67-6-102, and” where it appears in subsection (b) and by deleting the last sentence of subsection (b) in its entirety.

SECTION 21. Tennessee Code Annotated, Section 67-6-702, is amended by deleting subsection (d) in its entirety.

SECTION 22. Tennessee Code Annotated, Section 67-6-702, is amended by deleting the last sentence of subsection (e) in its entirety.

SECTION 23. Tennessee Code Annotated, Section 67-6-225, is amended by deleting the last sentence of subsection (b) in its entirety and by adding the following new subsection:

For purposes of applying subsection (b), parts or accessories for aircraft that are installed at the factory and delivered with the aircraft as original equipment and/or parts or accessories for aircraft that are installed by the dealer and/or distributor prior to sale, at the time of the sale, or which are included as part of the sales price of the aircraft shall be treated as a part of the aircraft. In addition, all necessary parts and equipment installed by an aircraft dealer which are essential to the functioning of the aircraft or are required to be installed on the aircraft prior to sale to the ultimate consumer pursuant to state or federal statutes relating to the lawful use of the aircraft shall be treated as a part of the aircraft.

SECTION 24. Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by adding the following new section:

Notwithstanding any provision of law to the contrary, with respect to a spallation neutron source facility owned by the United States government or instrumentality thereof there shall be exempt from the tax levied by this chapter:

(1) any property that becomes a part of or is used in the operation of the facility or its activities;

(2) any services, materials or items furnished or supplied to the facility or its operations.

SECTION 25. Notwithstanding any provision of law to the contrary, the property, activities and income of the United States government, including the U.S. Department of Energy, directly relating to the spallation neutron source facility, are exempt from all fees and taxes of the state of Tennessee, its subdivisions, municipalities and taxing districts. The commissioner of revenue shall implement and interpret this section so that the total taxes and fees in any manner or form paid by the United States government on the facility and the property, activities and income of the Department of Energy relating to the facility to the state of Tennessee or its counties, municipalities, or any other subdivision thereof, does not exceed the aggregate of the taxes and fees for which the federal government would be liable if the project were located in any other state that contains a national laboratory of the Department of Energy.

SECTION 26. Tennessee Code Annotated, Section 67-6-103, is amended by deleting subsection (a) and by substituting instead the following:

(a) The commissioner shall deposit promptly to the credit of the state treasurer in state depositories all moneys received by the commissioner under the provisions of this chapter, and all such moneys shall be earmarked and allocated as follows:

(1) 25.9759% of such moneys shall be earmarked and allocated specifically and exclusively to the general fund;

(2) 65.0970% of such moneys shall be earmarked and allocated specifically and exclusively to educational purposes; and

(3) (A) 7.3040% shall be appropriated to the several incorporated municipalities within the state of Tennessee to be allocated and distributed to them monthly by the commissioner of finance and administration in the proportion as the population of each municipality bears to the aggregate population of all municipalities within the state according to the latest federal census and other censuses authorized by law. Municipalities incorporated subsequent to the last decennial federal census shall, until the next decennial federal census, be eligible for an allotment, commencing on July 1, following incorporation, election and installation of officials, on the population basis determined under regulations of the state planning office and certified by that office to the commissioner; provided, that an accurate census of population has been certified to the state planning office by the municipality. Municipalities now participating in allocation shall continue to do so on the basis of their population determined according to law;

(B) (i) A municipality having a population of one thousand one hundred (1,100) or more persons, according to the federal census of 1970 or any subsequent federal census, in which at least forty percent (40%) of the assessed valuation (as shown by the tax assessment rolls or books of the municipality) of the real estate in the municipality consists of hotels, motels, tourist courts accommodation, tourist shops and restaurants, is defined as a "premiere type tourist resort" for purposes of this chapter. As an alternative to and in lieu of the allocation prescribed in subdivision (a)(3)(A), a premiere type tourist resort may elect to receive 6.0480% of the tax actually collected and remitted by dealers within the boundaries of such resort. Any distribution made to a premiere type tourist resort pursuant to such election shall be earmarked and paid from the general fund. If, however, any such payment is made to a premiere type tourist

resort pursuant to the election, the amount which would have been received by such resort had the resort not exercised the election shall be earmarked and allocated to the general fund;

(ii) A municipality meeting the criteria set forth in subdivision (a)(3)(B)(i) and also owning a golf course and ski slope shall also receive an amount equal to the amount distributed pursuant to subdivision (a)(3)(B)(i). Any distribution made to such a municipality shall be earmarked and paid from the general fund for the purpose of assisting in the retirement of the convention center obligations in connection with the acquisition, construction and operation of the convention center;

(iii) A municipality meeting the criteria set forth in subdivision (a)(3)(B)(i) and also containing within its boundaries a theme park of not less than eighty (80) acres shall also receive an amount equal to the distribution pursuant to subdivision (a)(3)(B)(i);

(iv) (a) A municipality meeting the criteria set forth in subdivision (a)(3)(B)(ii) shall also receive in addition to amounts authorized in this subsection in the 1988-1989 fiscal year, an amount equal to fifty-six percent (56%) of the amount distributed in the 1986-1987 fiscal year pursuant to subdivision (a)(3)(B)(ii), and an amount equal to ninety percent (90%) of the amount distributed in the 1986-1987 fiscal year in subsequent years;

(b) A municipality meeting the criteria set forth in subdivision (a)(3)(B)(iii) shall also receive, in addition to amounts authorized in this subsection in the 1988-1989 fiscal year, an amount equal to sixty percent (60%) of the amount distributed in the 1986-1987 fiscal year pursuant to subdivision (a)(3)(B)(iii), and an amount equal to ninety-six percent (96%) of the amount distributed in the 1986-1987 fiscal year in subsequent years;

(C) Any municipality shall have the right to take not more than one (1) special census at its own expense at any time during the interim between the regular decennial federal census. Such right shall include the current decennium. Any such census shall be taken by the federal bureau of the census, or in a manner directed by and satisfactory to the state planning office. The population of the municipality shall be revised in accordance with the special census for purposes of distribution of such funds, effective on the next July 1 following the certification of the census results by the federal bureau of the census or the state planning office to the commissioner of finance and administration; the aggregate population shall likewise be adjusted in accordance with any such special census, effective the same date as aforementioned;

(D) Any other such special census of the entire municipality taken in the same manner provided herein, under any other law, shall be used for the distribution of such funds, and in that case, no additional special census shall be taken under the provisions of this section;

(E) Before distributing moneys to incorporated municipalities from the sales tax, as provided for herein, the commissioner of finance and administration shall make a deduction therefrom monthly of a sum equal to one percent (1%) of the 6.0480% allocated to incorporated municipalities. This sum, together with an appropriation per annum from the general fund of the state, shall be apportioned and transmitted to the University of Tennessee for use by the university in establishing and operating a municipal technical advisory service in its institute for public service, and shall be used for studies and research in municipal government, publications, educational conferences and attendance at such conferences and in furnishing technical, consultative and field services to municipalities in problems relating to fiscal administration, accounting, tax

assessment and collection, law enforcement, improvements and public works, and in any and all matters relating to municipal government. This program shall be carried on in cooperation with and with the advice of cities and towns in the state acting through the Tennessee municipal league and its executive committee, which is recognized as their official agency or instrumentality;

(4) 1.6231% is appropriated to the sinking fund account to be used by the state funding board for the payment of principal and interest becoming due on state bonds issued by the state of Tennessee.

SECTION 27. Tennessee Code Annotated, Section 67-6-103(c), is amended by deleting subdivision (2) in its entirety and by substituting instead the following:

(2) Notwithstanding any other provision of law or this act to the contrary, the portion of the sales and use tax revenue dedicated to education, grades k-12, pursuant to the provisions of Chapter 529 of the Public Acts of 1992 and § 67-6-224(b), shall continue to be earmarked for such purposes as provided in § 49-3-357 and deposited in the education trust fund of 1992.

SECTION 28. Tennessee Code Annotated, Title 12, Chapter 4, Part 1, is amended by adding the following new section:

(a) The state or other state entities shall not contract to acquire goods or services, and no person may contract to supply goods or services to the state or other state entities, unless, prior to or contemporaneous with entering into the contract, the person contracting to supply goods or services and its affiliates register with the department of revenue to collect and remit the sales and use tax levied by Title 67, Chapter 6; provided, however, nothing in this section shall require a person or affiliate to register if the person or affiliate does not make sales to customers in Tennessee of tangible personal property or services, which if the sales occurred wholly within Tennessee would be taxable under this chapter. This provision is specifically applicable

to foreign persons, notwithstanding the fact that such foreign persons or their affiliates may not otherwise be legally obligated to collect and remit such tax.

(b) For purposes of this section:

(1) "Person(s)" has the same meaning as in § 67-6-102(21).

(2) "Other state entities" has the same meaning as in § 12-4-601.

(3) "Affiliates" means each and every affiliate of the person contracting with the state or other state entities, as the term "affiliate" is defined in § 48-103-102(1).

(c) The commissioner of revenue and the commissioner of finance and administration shall devise procedures to ensure compliance with the provisions of this section.

Tennessee Code Annotated § 67-1-1707 is amended by adding the following new subsection:

() The commissioner may provide tax information to an official of any state agency or other state entity, for the purpose of insuring compliance with the provisions of Title 12, Chapter 4, Part 1, requiring that persons contracting with the state or other state entities register themselves and their affiliates to collect and remit taxes. No agency or employee thereof who receives tax information under this subsection shall disclose such information to any person other than the person to whom it relates, except as otherwise may be authorized by law.

SECTION 29. Tennessee Code Annotated, Title 67, Chapter 2, is amended by deleting Part 1 in its entirety.

SECTION 30. Tennessee Code Annotated, Title 67, Chapter 8, is amended by deleting parts 2 through 4 and by adding the following new part:

PART 8 - INHERITANCE TAX OF 1999 - FEDERAL DEATH TAX CREDIT

67-8-801. A tax is levied on the transfer of every taxable estate, as defined by 2051 of the Internal Revenue Code, as amended, of every individual who dies a domiciliary of Tennessee. A tax is also levied on the transfer by every individual who dies not a domiciliary of Tennessee of real property situated in this state and/or tangible personal property which has an actual situs within this state. The tax imposed by this part is a tax exclusively for the use of the state, and no county, municipality or taxing district shall have power to levy any like tax.

67-8-802. The tax levied by this part shall be determined and paid at those times, in the manner, and by those persons specified in this part.

67-8-803. (a) It shall be the duty of the personal representative of the estate of any individual, who dies a domiciliary of this state and whose estate is required to file a federal estate tax return, to file with the commissioner of revenue, within the time period required for filing such return with the federal authorities, a report on such forms as the commissioner may prescribe, a copy of the federal estate tax return and a copy of the decedent's will, if any.

(b) If the estate's personal representative is not required to file a federal estate tax return under applicable federal law and such representative cannot file a separate affidavit, pursuant to section 30-2-616, with the court administering the estate because the decedent made certain lifetime gifts of property, the representative shall file with the commissioner, within nine (9) months from the death of the decedent, a report on such forms as the commissioner may prescribe and a copy of the decedent's will, if any.

(c) The tax due under this section shall be the maximum amount allowable as a credit for state death taxes under the Internal Revenue Code, as amended. However, if the decedent owned at the time of his or her death real property or tangible personal property having a situs in one or more states, and any other such state requires the payment of a death tax for which a credit is received against federal taxes, the inheritance tax due under this part shall be reduced to an amount which bears the same ratio to the total state death tax credit allowable for federal estate tax purposes as the gross value of the property taxable in this state bears to the value of

the entire gross estate for federal estate tax purposes. Such reduction of tax due shall be allowed only to the extent that proof is provided to the commissioner of payment of any other such state tax or taxes.

(d) The personal representative of the estate shall file with the commissioner a copy of the federal estate tax closing letter within thirty (30) days of issuance by the federal authorities. If the maximum amount allowable as a credit for state death taxes as finally determined by the federal authorities for federal estate tax purposes is increased or decreased with respect to the amount shown on the original federal return, the personal representative of the estate shall file with the commissioner, within thirty (30) days of the date of the federal adjustment, a copy of the documentation received from the federal authorities, and such other or additional documentation as the commissioner may require, showing all changes made in the original return and the increase or decrease in the amount allowable as a credit for state death taxes, and shall pay any additional tax due.

67-8-804. (a) It shall be the duty of the personal representative of the estate of any individual, who dies not a domiciliary of this state but who owns or controls real property located in this state or tangible personal property having a situs in this state and whose estate is required to file a federal estate tax return, to file with the commissioner, within the time period required for filing such return with the federal authorities, a report on such forms as the commissioner may prescribe, a copy of the federal estate tax return and a copy of the decedent's will, if any.

(b) If the estate's personal representative is not required to file a federal estate tax return under applicable federal law and such representative cannot file a separate affidavit, pursuant to section 30-2-616, with the court administering the estate in Tennessee because the decedent made certain lifetime gifts of property, the representative shall file with the commissioner, within nine (9) months from the death of the decedent, a report on such forms as the commissioner may prescribe and an exact copy of the decedent's will, if any.

(c) The tax due under this section shall be an amount that bears the same ratio to the total maximum state death tax credit allowable for federal estate tax purposes as the gross value of the property taxable in this state bears to the value of the entire gross estate for federal estate tax purposes.

(d) The personal representative of the estate shall file with the commissioner a copy of the federal estate tax closing letter within thirty (30) days of issuance by the federal authorities. If the maximum amount allowable as a credit for state death taxes as finally determined for federal estate tax purposes by the federal authorities is increased or decreased with respect to the amount shown on the original return, the personal representative of the estate shall file with the commissioner, within thirty (30) days of the date of the federal adjustment, a copy of the documentation received from the federal authorities, and such other or additional documentation as the commissioner may require, showing all changes made in the original return and the increase or decrease in the amount allowable as a credit for state death taxes, and shall pay any additional tax due.

67-8-805. (a) The taxes levied by this part shall be due and payable to the commissioner by the personal representative of the estate on or before the due date of the federal estate tax return.

(b) In the event of late filing of required documentation, or in the event of late payment of all or a portion of the tax due or payment of any additional taxes due caused by a federal adjustment, penalties and interest shall be payable pursuant to applicable law.

(c) The commissioner has authority, in the exercise of the commissioner's discretion, for good cause shown, to grant the estate an extension of time to file the documents required by section 67-8-803 or section 67-8-804 and pay the tax herein levied, without penalty attaching. However, the tax shall bear interest as required by applicable law from the original due date until paid. The penalties required by applicable law shall be paid by the estate unless the tax

and interest thereon shall be paid on or before the expiration date of the extension granted by the commissioner.

67-8-806. (a) It is the duty of the clerk of the court wherein an estate is administered by an executor, administrator, or trustee, within thirty (30) days of the date of its issuance of letters of administration or letters testamentary, to deliver, or forward by mail, to the commissioner, a statement under the clerk's seal of office giving the name and date of death of the decedent and the decedent's address at the time of death, and the name and address (and the telephone number, if known) of the executor, administrator, or trustee qualified.

(b) For this service, the clerk shall be allowed to demand and collect in advance, five dollars (\$5.00), which amount shall be in addition to the usual and customary probate fees allowed by law and shall be paid by the representative of the estate and may be deducted as a part of the cost of administration.

(c) Any clerk who shall violate any of the provisions of this section shall be subject to a penalty of five hundred dollars (\$500), to be recovered by the commissioner, for the benefit of the state, in any court of competent jurisdiction. However, the commissioner may, in the commissioner's discretion, waive or reduce such penalty in any case to not less than one hundred dollars (\$100) where there appears no manifest intent to evade this part.

67-8-807. When any personal representative of a decedent's estate fails to file any of the returns, reports or documents required by section 67-8-803 or section 67-8-804, the commissioner is authorized to assess taxes against the estate based on any information available.

67-8-808. (a) (1) All taxes due by an estate under this part shall be paid by the executor, administrator or trustee from the assets subject to the inheritance tax. No part of the property of an estate subject to this tax shall be distributed until the tax thereon has been paid; provided, that such executor, administrator or trustee may, with the written consent of the commissioner, sell or transfer property of the estate sufficient to pay the tax.

(2) For the sole purpose of negotiating the sale of real estate, stocks, bonds, and other registered assets prior to the time of the payment of taxes due the state, the commissioner is authorized to waive the liens imposed by § 67-1-1403(d) against the transferred property for taxes due by an estate; however, such waiver shall not affect the state's tax liens against any other property of the decedent or the decedent's estate.

(3) Notwithstanding any provision of law to the contrary, where an individual's death terminates his or her interest in real estate, stocks, bonds, and other registered assets, which property was previously owned with the surviving spouse in a tenancy by the entirety or a joint tenancy with right of survivorship, the commissioner's waiver pursuant to subdivision (a)(2) is not required for the surviving spouse to transfer such property free of liens for taxes due by the decedent's estate under this part.

(b) For purposes of subsection (a), penalty and/or interest attributable to such taxes shall be considered to be a part of such taxes.

67-8-809. (a) Upon the payment of the full amount of taxes levied against an estate under this part, the commissioner shall issue receipt therefor in duplicate to the representative of the estate, one (1) copy of which shall be filed in the office of the clerk of the court in which such estate is being administered. Except as provided in section 30-2-616, no final accounting or settlement of such estate shall be made by the court prior to the filing of such receipt, or until the filing of a certificate by the commissioner that no tax is due thereon, such receipt or certificate to be furnished by the commissioner without cost to the estate or to the beneficiaries thereof.

(b) Such receipt or certificate may be recorded in the office of the register of the county in which such real estate is situated, and it shall be conclusive proof that the tax applicable to such real estate has been paid, and any lien thereon shall be thereby released.

67-8-810. (a) Failure or refusal to file any return or document provided for in this part is a Class C misdemeanor. The payment of any such criminal penalty shall in not affect the liability for the tax, interest and any other penalties prescribed herein.

(b) The filing of a false return, document or affidavit with intent to deceive constitutes the crime of perjury.

67-8-811. Executors, administrators and trustees shall be liable for all taxes payable on the estate, together with any interest or penalties herein provided, until the same shall have been paid; provided, that in no case shall such executor, administrator or trustee be liable for a greater amount than was actually received by the executor, administrator or trustee.

67-8-812. If the tax levied under this part is not paid in full by the personal representative of the estate when due, and if such representative has paid the maximum amount of the estate's liability for which such representative is liable under section 67-8-811, the beneficiaries of any assets upon which the inheritance tax is levied by section 67-8-801 shall be personally liable for such tax to the extent of the value of the assets included in the taxable estate and received by such beneficiaries.

67-8-813. The commissioner shall administer and enforce the assessment and collection of the taxes and penalties imposed by this part.

67-8-814. Upon the issuance by the state of a receipt to an administrator or executor who has paid the tax levied under this part, the administrator or executor shall be subrogated to any lien or right to proceed against any transferred property in the hands of a transferee, donee, or bona fide purchaser which the state might have had and the issuance of the receipt by the commissioner after the payment of the tax due shall be deemed an assignment by the state to the administrator or executor of the lien or right to proceed against the transferred property, the transferee, donee or bona fide purchaser and shall be conclusive evidence thereof; provided, that for the lien to remain effective, the executor or administrator must file with the register of the county of decedent's residence and any county wherein any real property affected is located

within fifteen (15) days of the issuance of such tax receipt, a notice of such lien, such notice to contain the administrator's or executor's name, the name of the decedent whose estate is involved, a description of the property against which the lien is claimed, and the amount of lien claimed, and upon satisfaction of the lien, a release thereof.

67-8-815. The commissioner shall promptly deposit to the credit of the state treasurer in state depositories all moneys received under the provisions of this part, and all such moneys shall be earmarked and allocated specifically and exclusively to the general fund.

SECTION 31. Tennessee Code Annotated, Section 67-1-1403(d) is amended by inserting the words “and part 8” between the words “part 2-5” and “of this title.”

SECTION 32. Tennessee Code Annotated, Section 67-1-1501(b)(4), is amended by adding the words “or additional inheritance tax” after the words “additional estate tax” each time they appear in that subdivision.

SECTION 33. Tennessee Code Annotated, Section 67-1-1802(a)(4), is amended by deleting the words “estate taxes due” in that subdivision and substituting in lieu thereof the words “any estate taxes or inheritance taxes that may be due.”

SECTION 34. Tennessee Code Annotated, Title 30, Chapter 2, Part 6, is amended by adding the following new section:

30-2-616. (a) If the estate's personal representative is not required by federal law to file a federal estate tax return, the court in which the estate is being administered in Tennessee may close the estate without the commissioner of revenue's issuance of a receipt for payment of taxes by the estate or a certificate that no taxes are due from the estate pursuant to section 67-8-809, if the representative files with the court a separate affidavit, executed to the best of such representative's knowledge, information and belief, under penalties of perjury, affirming the following facts:

(1) The estate is not required by federal law to file a federal estate tax return; and

(2) Either that:

(A) the decedent made no gratuitous transfers of property by gift, or other transfers for less than adequate and full consideration in money or money's worth, upon which gift taxes were payable pursuant to applicable law by the decedent; or

(B) all applicable gift taxes upon any gratuitous transfers of property made by the decedent during the decedent's life, by gift, or other transfers for less than adequate and full consideration in money or money's worth, have been paid to the commissioner.

(b) Any person who knowingly files a false affidavit pursuant to this section with intent to deceive or to evade tax shall be liable for any inheritance taxes and/or gift taxes owed by the estate.

(c) The personal representative shall file a duplicate original of such separate affidavit with the commissioner of revenue within ten (10) days of filing such affidavit with the court.

(d) Notwithstanding any provision of law to the contrary, an order of the court administering the estate of a decedent that closes the estate and affirms the filing of an affidavit with the court pursuant to subsection (a), shall constitute conclusive proof that the state's liens for taxes provided for by § 67-1-1403(d), are extinguished, and such order may be recorded in the office of the register of any appropriate county.

SECTION 35. Tennessee Code Annotated, Section 67-8-501, is amended by inserting the words and punctuation "and parts 6-8 of this chapter," after the words "As used in this part".

SECTION 36. Tennessee Code Annotated, Section 67-8-605, is amended by deleting the language "inheritance tax law, as stated in parts 3-5 of this chapter" and substituting instead the language "applicable inheritance tax law, as stated in parts 3-5 and/or part 8 of this chapter".

SECTION 37. Tennessee Code Annotated, Section 30-2-601(b) is amended by deleting subdivision (1) and by substituting instead the following:

(1) That the personal representative has properly administered the estate; has paid or settled all claims which were lawfully presented; has paid all expenses of administration; has mailed or delivered notice of the requirement to file claims, as prescribed in § 30-2-306(e), to the creditors of the decedent who were known to or reasonably ascertainable by the personal representative; has filed with the clerk of the court exercising probate jurisdiction the final receipt and release from the department of revenue evidencing payment of all Tennessee inheritance tax due from the estate, or has filed an affidavit with the court and the commissioner pursuant to § 30-2-616; has distributed the estate according to the will and obtained and filed receipts for specific bequests or has distributed the estate according to the laws of intestate succession; and

SECTION 38. Tennessee Code Annotated, Section 30-4-103(6)(B) is amended by deleting subdivision (i) and by substituting instead the following:

(i) Either the tax receipt or the tax certificate issued pursuant to § 67-8-420 or § 67-8-809, or the affidavit filed pursuant to § 30-2-616; and

SECTION 39. Tennessee Code Annotated, Section 67-8-101, is amended by deleting subsection (e) in its entirety and by substituting instead the following:

(e) (1) Any disposition of all or part of a "qualifying income interest for life," as defined in § 2056(b)(7)(B)(ii) of the Internal Revenue Code (26 U.S.C. § 2056(b)(7)(B)(ii)), in any property to which this subsection (e) applies shall be treated as a transfer of such property.

(2) This subsection applies to any property if a deduction was allowed with respect to the transfer of such property to the donor:

(A) For estates of decedents whose date of death was on or before December 31, 1999, under § 67-8-315(a)(6) by reason of its incorporation of § 2056(b)(7) of the Internal Revenue Code (26 U.S.C. § 2056(b)(7)); or

(B) Under § 67-8-105(a) by reason of its incorporation of § 2523(f) of the Internal Revenue Code (26 U.S.C. § 2523(f)).

(3) This subsection applies to any property if an inheritance tax deduction was not allowed with respect to the transfer of such property to the donor because the transfer occurred on or after January 1, 2000, but an election pursuant to 2056(b)(7) of the Internal Revenue Code (26 U.S.C. 2056(b)(7)) has been made on behalf of the original transferor of the property and accepted by the federal authorities.

SECTION 40. Tennessee Code Annotated, Section 67-8-117, is amended by deleting the section in its entirety and by substituting instead the following:

The gift tax laws of this part shall not be construed impliedly to repeal or modify the inheritance tax laws, compiled in parts 3-5 and part 8 of this chapter, or the Tennessee Estate Tax Law, compiled in part 2 of this chapter, but shall be construed in pari materia with such laws.

SECTION 41. Tennessee Code Annotated, Section 67-8-102, is amended by deleting the section in its entirety.

SECTION 42. Tennessee Code Annotated, Section 67-8-104, is amended by deleting the section in its entirety and by substituting instead the following:

(a)(1) There shall be allowed against the net gifts made during any calendar year a maximum single exemption of ten thousand dollars (\$10,000) against the net gifts made to donees.

(2) In the event the aggregate net gifts made to donees for any calendar year exceed ten thousand dollars (\$10,000), the tax shall be applicable only to the extent that

the gifts (other than gifts of future interests in property) to each donee exceed the sum of \$10,000.

(b) No part of a gift to an individual who has not attained twenty-one (21) years of age on the date of such transfer shall be considered a gift of a future interest in property for purposes of subsection (a) if the property and the income therefrom:

(1) May be expended by, or for the benefit of, the donee before the donee's attaining twenty-one (21) years of age; and

(2) Will to the extent not so expended:

(A) Pass to the donee on the donee's attaining twenty-one (21) years of age; and

(B) In the event the donee dies before attaining twenty-one (21) years of age, be payable to the estate of the donee or as the donee may appoint under a general power of appointment as defined in § 2514(c) of the Internal Revenue Code (26 U.S.C. § 2514(c)).

(c) For the purposes of this section, the standard exemption amount allowable for gifts to donees shall increase each year by the same amount, if any, that the annual exclusion amount for federal gift taxation purposes increases.

SECTION 43. Tennessee Code Annotated, Section 67-8-106 is amended by deleting the section in its entirety and by substituting instead the following:

The tax levied by this part with respect to gifts made shall be computed at the following rates:

5.5 percent on the amount of net taxable gifts up to \$40,000;

6.5 percent on the next \$200,000 or part thereof;

7.5 percent on the next \$200,000 or part thereof;

9.5 percent on the excess over \$440,000.

SECTION 44. Tennessee Code Annotated, Title 67, Chapter 2, is amended by adding the following new part:

67-2-201. The title of this part is, and may be cited as, “The Tennessee Flat Tax Law of 1999.”

67-2-202. (a) As used in this part, unless the context otherwise requires:

(1) “Commissioner” means the commissioner of revenue or the commissioner’s delegate.

(2) “Department” means the department of revenue.

(3) “Estimated tax” means the amount which the taxpayer estimates to be the taxpayer’s income tax under this part for the taxable year less the amount which the taxpayer estimates to be the sum of any credits allowable for tax withheld.

(4) “Individual” means a natural person.

(5) “Internal Revenue Code” means Title 26 of the United States Code as effective during the year in which the tax under this part is determined.

(6) “Nonresident individual” means any natural person who is not a resident of this state for any portion of the taxable year.

(7) “Nonresident trust or estate” means any trust or estate other than a resident trust or estate or a part-year resident trust.

(8) “Partner” means a partner as defined in Section 7701(a)(2) of the Internal Revenue Code and the regulations adopted thereunder, as from time to time amended. With respect to any reference in this part, or in regulations adopted under this part, to pass-through entities, “partner” shall include a member of a limited liability company that is treated as a partnership for federal income tax purposes, and includes any person who owns, directly or indirectly through one or more pass-through entities, an interest in another pass-through entity.

(9) "Partnership" means a partnership as defined in section 7701(a)(2) of the Internal Revenue Code and the regulations adopted thereunder, as from time to time amended, and any reference in this part, or in regulations adopted under this part, to a partnership shall include a limited liability company that is treated as a partnership for federal income tax purposes.

(10) "Part-year resident individual" means any natural person who is not either a resident of this state for the entire taxable year or a nonresident of this state for the entire taxable year.

(11) "Part-year resident trust" means any trust which is not either a resident trust or a nonresident trust for the entire taxable year.

(12) "Pass-through entity" means any partnership of any kind whatsoever, any limited liability company or other entity treated as a partnership for purposes of federal income taxation, and any S corporation.

(13) "Person" means any natural person, association, corporation, partnership, limited liability company, trust, estate, and any other entity of any kind whatsoever.

(14) "Resident individual" means any natural person who is domiciled in this state at any time during the taxable year or who resides in this state during the taxable year for other than a temporary or transitory purpose. In the absence of convincing proof to the contrary, an individual other than a member of the armed forces of the United States, who is present in this state for more than 183 days during the taxable year, is presumed to be a resident, but the absence of an individual from this state for more than 183 days raises no presumption that the individual is not a resident. A resident who removes from the state during a taxable year is considered a resident until he or she has both established a definite domicile elsewhere and abandoned any domicile in this state.

(15) "Resident trust or estate" means:

(A) the estate of a decedent who at the time of death was a resident of this state;

(B) the estate of a person who, at the time of commencement of a case under Title 11 of the United States Code, was a resident of this state;

(C) a trust, or a portion of a trust, consisting of property transferred by will of a decedent who at the time of death was a resident of this state; and

(D) a trust, or a portion of a trust, consisting of the property of:

(i) a person who was a resident of this state at the time the property was transferred to the trust if the trust was then irrevocable;

(ii) a person who, if the trust was revocable at the time the property was transferred to the trust, and has not subsequently become irrevocable, was a resident of this state at the time the property was transferred to the trust; or

(iii) a person who, if the trust was revocable when the property was transferred to the trust but the trust has subsequently become irrevocable, was a resident of this state at the time the trust became irrevocable.

(16) "S corporation" means any corporation which is an S corporation for federal income tax purposes.

(17) "Taxable year" means the year defined in section 67-2-205.

(18) "Taxpayer" means any person, trust or estate subject to the tax levied by this part, including any pass-through entity referenced in section 67-2-216.

(19) "Trust" means an arrangement that is ordinarily created either by a will or by an inter vivos declaration whereby a trustee or trustees take title to property for the purpose of protecting or conserving it for beneficiaries and that, under 26 C.F.R. § 301.7701-4, is classified and treated as a trust (and not as an association, under 26

C.F.R. § 301.7701-2, or partnership, under 26 C.F.R. § 301.7701-3) for federal income tax purposes. "Trust" does not include any real estate mortgage investment conduit, as defined in section 860D of the Internal Revenue Code, that is created as a trust, or any other entity described in section 67-4-2105(b)(10).

(b) Any term used in this part shall have the same meaning as when used in a comparable context in the laws of the United States relating to income taxes unless a different meaning is provided or clearly required.

67-2-203. (a) The tax levied by this part is declared to be a tax on one or more of the following:

(1) The privileges of engaging in a business, profession, occupation, trade, employment, enterprise, or endeavor; of investing or depositing money or capital; of selling one's labor or property; of engaging in a lease or rental; of benefiting from a pension, trust, annuity, or similar account; of receiving income or earnings; of applying one's talents, skills, time, efforts, resources, or property for personal gain or advantage; or of enjoying the protections and benefits provided by government; and/or

(2) Income as a species of intangible personal property; and/or

(3) Income;

Provided, however, if any of the categories or subcategories contained in this subsection are determined by a court of competent jurisdiction to be beyond the authority of the general assembly to levy taxes on such categories or subcategories, then the tax levied by this part shall not be deemed to be a tax on the categories or subcategories determined to be invalid.

(b) It is unlawful to engage in any of the privileges enumerated in subsection (a)(1) which produce income which is used to measure the tax levied by this part without paying the tax in accordance with the provisions of this part.

(c) The tax levied by this part is for state purposes only, and no county or municipality shall have power to levy any like tax.

67-2-204. (a) There is hereby levied on each resident individual, resident estate, and resident trust, of this state, a tax in an amount equal to three and three-quarters percent (3.75%) of the taxpayer's Tennessee taxable income.

(b) There is hereby levied on each nonresident individual of this state a tax equal to the product of an amount equal to the tax computed as if such nonresident were a resident, multiplied by a fraction, the numerator of which is the nonresident's Tennessee adjusted gross income derived from or connected with sources within this state and the denominator of which is the nonresident's Tennessee adjusted gross income; provided, if the nonresident's Tennessee adjusted gross income is less than the nonresident's Tennessee adjusted gross income derived from or connected with sources within this state, then the nonresident's Tennessee adjusted gross income derived from or connected with sources within this state, reduced by the amount of the exemption provided in section 67-2-206, shall be the nonresident's Tennessee taxable income derived from or connected with sources within this state and shall be multiplied by the tax rate specified in subsection (a) of this section for the purposes of determining the tax pursuant to this section. The provisions of this subsection shall also apply to nonresident trusts and estates, and wherever reference is made in this subsection to nonresidents of this state, such reference shall be construed to include nonresident trusts and estates; provided any reference to a nonresident's Tennessee adjusted gross income derived from sources within this state or to a nonresident's Tennessee adjusted gross income shall be construed, in the case of a nonresident trust or estate, to mean the nonresident trust or estate's Tennessee taxable income derived from sources within this state and the nonresident trust or estate's Tennessee taxable income, respectively.

(c) There is hereby levied on the Tennessee taxable income derived from or connected with sources within this state of each part-year resident individual a tax which shall be a product equal to the tax computed as if such part-year resident were a resident, multiplied by a fraction, the numerator of which is the part-year resident's Tennessee adjusted gross income derived

from or connected with sources within this state, as described in section 67-2-210, and the denominator of which is the part-year resident's Tennessee adjusted gross income; provided, if the part-year resident's Tennessee adjusted gross income is less than such part-year resident's Tennessee adjusted gross income derived from or connected with sources within this state, then such part-year resident's Tennessee adjusted gross income derived from or connected with sources within this state, reduced by the amount of the exemption provided in section 67-2-206, shall be such part-year resident's Tennessee taxable income derived from or connected with sources within this state and shall be multiplied by the tax rate specified in subsection (a) of this section for the purposes of determining the tax pursuant to this section. The provisions of this subsection shall apply to part-year resident trusts, and wherever reference is made in this subsection to part-year residents, such reference shall be construed to include part-year resident trusts; provided any reference to a part-year resident's Tennessee adjusted gross income derived from sources within this state or a part-year resident's Tennessee adjusted gross income shall be construed, in the case of a part-year resident trust, to mean the part-year resident trust's Tennessee taxable income derived from sources within this state and the part-year resident trust's Tennessee taxable income, respectively.

(d) Any person exempt from federal income tax by reason of its purposes or activities shall be exempt from tax levied under this part, but such person is not exempt from the reporting and withholding requirements imposed by this part.

67-2-205. (a) For purposes of the tax levied under this part, a taxpayer's taxable year shall be the same as the taxpayer's taxable year for federal income tax purposes and a taxpayer's method of accounting shall be the same as the taxpayer's method of accounting for federal income tax purposes. If no method of accounting has been regularly used by the taxpayer, Tennessee taxable income shall be computed under such method that in the opinion of the commissioner fairly reflects income.

(b) If a taxpayer's taxable year is changed for federal income tax purposes, the taxable year for purposes of the tax under this part shall be similarly changed. If a taxpayer's method of accounting is changed for federal income tax purposes, the method of accounting for purposes of this part shall similarly be changed.

(c) In computing a taxpayer's Tennessee taxable income for any taxable year under a method of accounting different from the method under which the taxpayer's Tennessee taxable income for the previous year was computed, there shall be taken into account those adjustments which are determined, under regulations adopted by the commissioner, to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted.

(d) If a taxpayer's method of accounting is changed, other than from an accrual to an installment method, any additional tax which results from adjustments determined to be necessary solely by reason of the change shall not be greater than if such adjustments were ratably allocated and included for the taxable year of the change and the preceding taxable years, not in excess of two years, during which the taxpayer used the method of accounting from which the change is made. If a taxpayer's method of accounting is changed from an accrual to an installment method, any additional tax for the year of such change of method and for any subsequent year which is attributable to the receipt of installment payments properly accrued in a prior year, shall be reduced by the portion of tax for any prior taxable year attributable to the accrual of such installment payments.

67-2-206. (a) For purposes of this part, "Tennessee taxable income" for resident individuals is defined as Tennessee adjusted gross income reduced by the exemptions based on filing status provided for in this section. Except as provided in section 67-2-229, filing status and the number of claimed dependents for the tax levied by this part must be the same as the federal income tax filing status and number of dependents for the same taxable year.

(b) Single individuals and married individuals filing separately are entitled to an exemption of five thousand dollars (\$5000).

(c) Married persons filing jointly, and persons who file as a surviving spouse, as defined in section 2(a) of the Internal Revenue Code, are entitled to a single exemption of ten thousand dollars (\$10,000).

(d) Individuals filing as heads of household are entitled to an exemption of six thousand five hundred dollars (\$6500).

(e) For each dependent not referred to in subsections (b), (c) or (d), there is an additional exemption of three thousand dollars (\$3000) per dependent.

(f) Each person filing a return, whose 65th birthday occurred anytime during or before the tax year, is entitled to an additional exemption of five thousand dollars (\$5000).

67-2-207. (a) For purposes of this part, "Tennessee adjusted gross income" of a natural person (resident, nonresident, and part-year resident individual) is defined as the person's federal adjusted gross income, adjusted as provided in this section.

(b) There shall be added to federal adjusted gross income the following amounts:

(1) to the extent not properly includable in gross income for federal income tax purposes, any interest income from obligations issued by or on behalf of any state, political subdivision thereof, or public instrumentality, state or local authority, district or similar public entity, exclusive of such income from obligations issued by or on behalf of the state of Tennessee, any political subdivision thereof, or public instrumentality, state or local authority, district or similar public entity created under the laws of the state of Tennessee, and exclusive of any such income with respect to which taxation by any state is prohibited by federal law;

(2) to the extent included in gross income for federal income tax purposes for the taxable year, the total taxable amount of a lump sum distribution for the taxable year deductible from such gross income in calculating federal adjusted gross income; and

(3) to the extent properly includable in determining the net gain or loss from the sale or other disposition of capital assets for federal income tax purposes, any loss from the sale or exchange of obligations issued by or on behalf of the state of Tennessee, any political subdivision thereof, or public instrumentality, state or local authority, district or similar public entity created under the laws of the state of Tennessee, in the income year such loss was recognized; provided that this subdivision (3) shall apply only to obligations the terms of which specifically exempt capital gains from taxation measured by income.

(c) There shall be subtracted from federal adjusted gross income the following amounts:

(1) to the extent properly includable in gross income for federal income tax purposes, any income with respect to which taxation by any state is prohibited by federal law;

(2) the amount of any refund or credit for overpayment of taxes measured by income levied by this state, or any other state of the United States or the District of Columbia, to the extent properly includable in gross income for federal income tax purposes;

(3) to the extent properly includable in gross income for federal income tax purposes, any tier 1 railroad retirement benefits;

(4) to the extent properly includable in gross income for federal income tax purposes, any interest income from obligations issued by or on behalf of the state of Tennessee, any political subdivision thereof, or public instrumentality, state or local authority, district or similar public entity created under the laws of the state of Tennessee;

(5) to the extent properly includable in determining the net gain or loss from the sale or other disposition of capital assets for federal income tax purposes, any gain from the sale or exchange of obligations issued by or on behalf of the state of Tennessee, any

political subdivision thereof, or public instrumentality, state or local authority, district or similar public entity created under the laws of the state of Tennessee, in the income year such gain was recognized; provided that this subdivision (5) shall apply only to obligations the terms of which specifically exempt capital gains from taxation measured by income; and

(6) fifty percent (50%) of any net long-term capital gain. For this purpose, "net long term capital gain" shall mean any long-term capital gain properly includable in gross income for federal income tax purposes less any long-term capital loss or carryover thereof included in the computation of federal gross income for the same tax year; provided, that such net long-term capital gain has not been deducted under some other provision of this subsection.

67-2-208. (a) The income of a nonresident individual derived from or connected with sources within this state shall be the sum of the net amount of items of income, gain, loss and deduction entering into the taxpayer's Tennessee adjusted gross income which are derived from or connected with sources within this state, including, but not limited to:

(1) compensation paid to the taxpayer as an employee, independent contractor, or otherwise, for personal services performed in this state;

(2) income from a business, trade or profession carried on in this state;

(3) the taxpayer's distributive share of partnership income, gain, loss and deduction, determined under section 67-2-213;

(4) the taxpayer's pro rata share of S corporation income, gain, loss and deduction, determined under section 67-2-213; and

(5) the taxpayer's share of estate or trust income, gain, loss and deduction, determined under section 67-2-214.

(b) If a husband and wife determine their federal income tax on a joint return but determine their Tennessee income taxes separately, they shall determine their incomes derived

from or connected with sources within this state separately as if their federal adjusted gross incomes had been determined separately.

(c) For purposes of this section, “derived from or connected with sources within this state” is defined as such term is defined in section 67-2-211.

67-2-209. (a) Tennessee taxable income of a resident trust or estate shall mean the taxable income of the fiduciary of such trust or estate as determined for purposes of the federal income tax, to which there shall be added or subtracted, as the case may be, the share of the trust or estate in the Tennessee fiduciary adjustment, as defined in subsection (c) of this section.

(b) If any trust or portion of a trust, other than a trust created by the will of a decedent, has one or more nonresident noncontingent beneficiaries, the Tennessee taxable income of the trust shall be modified as follows: The Tennessee taxable income of the trust shall be the sum of:

(1) all such income derived from or connected with sources within this state, and

(2) that portion of such income derived from or connected with all other sources, which is derived by applying to all such income derived from or connected with all other sources a fraction, the numerator of which is the number of resident noncontingent beneficiaries, and the denominator of which is the total number of noncontingent beneficiaries.

(c) “Tennessee fiduciary adjustment” means the net positive or negative total of the following items relating to income, gain, loss or deduction of a trust or estate:

(1) There shall be added together:

(A) any interest income from obligations issued by or on behalf of any state, political subdivision thereof, or public instrumentality, state or local authority, district, or similar public entity, exclusive of such income from obligations issued by or on behalf of the state of Tennessee, any political subdivision thereof, or public instrumentality, state

or local authority, district, or similar public entity created under the laws of the state of Tennessee and exclusive of any such income with respect to which taxation by any state is prohibited by federal law;

(B) to the extent properly includable in determining the net gain or loss from the sale or other disposition of capital assets for federal income tax purposes, any loss from the sale or exchange of obligations issued by or on behalf of the State of Tennessee, any political subdivision thereof, or public instrumentality, state or local authority, district, or similar public entity created under the laws of the State of Tennessee, in the income year such loss was recognized; provided that this subdivision (B) shall apply only to obligations the terms of which specifically exempt capital gains from taxation measured by income; and

(C) to the extent deductible in determining federal taxable income prior to deductions relating to distributions to beneficiaries, any interest on indebtedness incurred or continued to purchase or carry obligations or securities the interest on which is exempt from tax under this part.

(2) There shall be subtracted from the sum of such items:

(A) to the extent properly includable in gross income for federal income tax purposes, any income with respect to which taxation by any state is prohibited by federal law;

(B) to the extent properly includable in gross income for federal income tax purposes, any interest income from obligations issued by or on behalf of the State of Tennessee, any political subdivision thereof, or public instrumentality, state or local authority, district, or similar public entity created under the laws of the State of Tennessee;

(C) to the extent properly includable in determining the net gain or loss from the sale or other disposition of capital assets for federal income tax

purposes, any gain from the sale or exchange of obligations issued by or on behalf of the State of Tennessee, any political subdivision thereof, or public instrumentality, state or local authority, district, or similar public entity created under the laws of the State of Tennessee, in the income year such gain was recognized; provided that this subdivision (C) shall apply only to obligations the terms of which specifically exempt capital gains from taxation measured by income;

(D) the amount of any refund or credit for overpayment of income taxes levied by this state, to the extent properly includable in gross income for federal income tax purposes for the taxable year and to the extent deductible in determining federal taxable income prior to deductions relating to distributions to beneficiaries for the preceding taxable year; and

(E) Fifty percent (50%) of any net long-term capital gain. For this purpose, "net long term capital gain" shall mean any long-term capital gain properly includable in gross income for federal income tax purposes less any long-term capital loss or carryover thereof included in the computation of federal gross income for the same tax year; provided, that such net long-term capital gain has not been deducted under some other provision of this subsection.

(d) (1) The respective shares of a trust or estate and its beneficiaries, including, solely for the purpose of this allocation nonresident beneficiaries, in the Tennessee fiduciary adjustment shall be in proportion to their respective shares of federal distributable net income of the trust or estate.

(2) If the trust or estate has no federal distributable net income for the taxable year, the share of each beneficiary in the Tennessee fiduciary adjustment shall be in proportion to the beneficiary's share of the trust or estate income for such year, determined under local law or the governing instrument, which is required to be distributed currently and any other amounts of

such income distributed in such year. Any balance of the Tennessee fiduciary adjustment shall be allocated to the trust or estate.

(3) The commissioner may by regulation establish such other method or methods of determining to whom the items comprising the fiduciary adjustment shall be attributed as may be appropriate and equitable. Such other method may be used by the fiduciary whenever the allocation of the fiduciary adjustment pursuant to subdivisions (1) and (2) of this subsection would result in an inequity which is substantial both in amount and in relation to the amount of the fiduciary adjustment.

(e) For purposes of this section, “derived from or connected with sources within this state” is defined as such term is defined in section 67-2-211.

67-2-210. (a) For purposes of this part, the income derived from or connected with sources within this state of a part-year resident individual shall be the sum of the following:

(1) Tennessee adjusted gross income for the period of residence, computed as if the taxpayer’s taxable year for Tennessee income tax purposes were limited to the period of residence; and

(2) the income derived from or connected with sources within this state for the period of nonresidence determined in accordance with section 67-2-208 as if the taxpayer’s taxable year for Tennessee income tax purposes were limited to the period of nonresidence.

(b) For purposes of this part, the income derived from or connected with sources within this state of a part-year resident trust shall be the sum of the following:

(1) The share of Tennessee adjusted gross income for the period of residence, determined as if such trust were an individual whose taxable year for federal income tax purposes were limited to the period of residence, allocated to the trust in accordance with the methods of allocation set forth in section 67-2-209; and

(2) the income derived from or connected with sources within this state for the period of nonresidence determined in accordance with section 67-2-214 as if its taxable year for federal income tax purposes were limited to the period of nonresidence.

(c) For purposes of this section, “derived from or connected with sources within this state” is defined as such term is defined in section 67-2-211.

67-2-211. (a) For purposes of this part, except as may be otherwise provided in this part, the term “derived from or connected with sources within this state” is defined in this section.

(b) Items of income, gain, loss and deduction derived from or connected with sources within this state shall be those items attributable to:

(1) the ownership or disposition of any interest in real, tangible or intangible personal property in this state;

(2) a business, trade, profession or occupation carried on in this state; and

(3) in the case of a shareholder of an S corporation, the ownership of shares issued by such corporation, to the extent determined under section 67-2-213.

(4) in the case of a partner, the ownership interest in the partnership, to the extent determined under section 67-2-213.

(c) Items of income, gain, loss and deduction derived from or connected with Tennessee sources do not include such items attributable to intangible personal property of a nonresident individual, including annuities, dividends, interest, and gains and losses from the disposition of intangible personal property, except to the extent attributable to property employed in a business, trade, profession or occupation carried on in Tennessee.

(1) Intangible personal property is employed in a business, trade, profession or occupation carried on in this state if such property's possession and control have been localized in connection with a business, trade, profession or occupation in Tennessee,

so that the property's substantial use and value attach to and become an asset of such business, trade, profession or occupation.

(2) If intangible personal property of a nonresident is employed in a business, trade, profession or occupation carried on in Tennessee, the entire income from such property, including gains from its sale, regardless of where the sale is consummated, is income derived from or connected with sources within this state. Where a nonresident individual sells real or tangible personal property located in Tennessee, and as a result of such sale receives intangible personal property (for example, a note) which generates interest income and/or capital gain income, such interest income is generally not attributable to the sale of the real or tangible personal property but is attributable to the intangible personal property; however, such capital gain income is attributable to the sale of the real or tangible personal property located in Tennessee. Therefore, such interest income to a nonresident does not constitute income derived from or connected with Tennessee sources. However, interest income derived from an instrument received as a result of a sale of real or tangible personal property located in Tennessee, where the instrument is employed in a business, trade, profession or occupation carried on in this state, does constitute income derived from or connected with Tennessee sources.

(3) A nonresident individual, other than a dealer holding property primarily for sale to customers in the ordinary course of the dealer's trade or business, shall not be deemed to carry on a trade, business, profession or occupation in this state solely by reason of the purchase or sale of intangible property, or the purchase, sale or writing of stock option contracts, or both, for the nonresident's own account.

(d) Deductions with respect to capital losses and net operating losses shall be based solely on income, gain, loss and deduction derived from or connected with sources within this state, under regulations adopted by the commissioner, but otherwise shall be determined in the same manner as the corresponding federal deductions.

(e) A business, trade, profession or occupation (as distinguished from personal services as an employee) is carried on within Tennessee by a nonresident individual:

(1) if the individual occupies, maintains or operates desk space, an office, a shop, a store, a warehouse, a factory, an agency, or other place where such nonresident's affairs are systematically and regularly carried on, notwithstanding the occasional consummation of isolated transactions outside Tennessee; or

(2) if activities in connection with the business are conducted in Tennessee with a fair measure of permanency and continuity.

(f) If a nonresident individual, or a partnership of which the nonresident individual is a member, carries on a business, trade, profession or occupation (as distinguished from personal services as an employee) both within and without Tennessee, the nonresident taxpayer may elect, or the commissioner may require the taxpayer, to allocate (as provided in subdivision (1) of this subsection), or to apportion (as provided in subdivision (2) of this subsection), to Tennessee on a fair and equitable basis, the items of income, gain, loss and deduction attributable to such business, trade, profession or occupation. For this purpose, compensation paid to nonresident employees and officers shall be attributed to Tennessee in accordance with the provisions of subsection (f) of this section. Once an individual elects, or the commissioner requires in writing, the use of either method (allocation or apportionment), the taxpayer shall continue to use that method unless, after application in writing to the commissioner, the commissioner makes a written determination that the method used no longer reflects income which is fairly attributable to Tennessee. The methods to be used for allocation or apportionment are set forth in subdivisions (1) and (2) below.

(1) If the books of the business are kept so as regularly to disclose, to the satisfaction of the commissioner, the proportion of the net amount of the items of income, gain, loss and deduction derived from or connected with Tennessee sources, the Tennessee nonresident income tax return of the nonresident individual shall disclose

the total amount of such items, the net amount of such items allocated to Tennessee, and the basis upon which such allocation is made. If income is reported using this method, the taxpayer shall consistently allocate the amounts of income on returns filed with any other state in which the taxpayer carries on business where such states permit allocation on the basis of separate books and records.

(2) If the books and records of the business do not disclose, to the satisfaction of the commissioner, the proportion of the net amount of the items of income, gain, loss and deduction attributable to the activities of the business carried on in Tennessee, such proportion shall be determined consistently with the provisions of section 67-4-2012, unless the commissioner by rule provides for some other method of apportionment.

(g) The Tennessee adjusted gross income derived from or connected with Tennessee sources of a nonresident individual rendering personal services as an employee includes the compensation for personal services entering into the individual's Tennessee adjusted gross income, but only if, and to the extent that, the services were rendered within Tennessee.

(1) When a nonresident employee, who is compensated on an hourly, daily, weekly or monthly basis, is able to establish the exact amount of pay received for services performed in Tennessee, such amount is included in Tennessee adjusted gross income derived from or connected with sources within this state.

(2) When no such exact determination of pay received for services performed in Tennessee is possible, the income of employees, who are compensated on an hourly, daily, weekly or monthly basis shall be apportioned to Tennessee by multiplying the total compensation wherever earned from the employment by a fraction, the numerator of which is the number of days spent working in Tennessee and the denominator of which is the total working days both within and without Tennessee. The product is included in Tennessee adjusted gross income derived from or connected with sources within this

state. The term “total working days” does not include days on which the employee was not required to work, such as holidays, sick days, vacations and paid or unpaid leave. For purposes of this section, when a working day is spent working partly in Tennessee and partly elsewhere, it is considered one-half of a day spent working in Tennessee.

(3) If a nonresident employee performs services for more than one employer both within and without Tennessee and is unable to determine the exact amounts earned or derived in Tennessee, such employee shall determine separately for each employer the compensation attributable to Tennessee sources. The sum of the amounts of compensation attributable to Tennessee sources shall be included in determining the Tennessee adjusted gross income derived from or connected with sources within this state.

(h) Compensation paid by the United States for active service in the Armed Forces of the United States, performed by an individual not domiciled in this state, shall not constitute income derived from or connected with sources within this state.

(i) The Tennessee adjusted gross income derived from or connected with sources within Tennessee of a nonresident member of a professional athletic team includes that proportion of such individual's compensation received for services rendered as a member of such team that the duty days spent within Tennessee rendering services for such team in any manner during the taxable year bears to the total number of duty days rendering services for such team in any manner during the taxable year. In determining whether duty days are spent within Tennessee, travel days are duty days spent within Tennessee if Tennessee is the travel destination and are not duty days spent within Tennessee if Tennessee is not the travel destination; provided, when a game is scheduled to be played on a travel day, the duty day is considered to be spent where the game is scheduled to be played.

(j) For purposes of subsection (i), the following definitions apply.

(1) “Member of a professional athletic team” includes, but is not limited to, active players, players on the disabled list, and any other persons who are required to travel with and perform services on behalf of a professional athletic team, on a regular basis, including coaches, managers, trainers and equipment managers.

(2) “Duty days” means all days, from the first day of the official pre-season training period of the professional athletic team through the day of the last game, including post-season games, in which such team competes or is scheduled to compete during the taxable year. “Duty days” include game days, travel days and practice days. For a member of a professional athletic team who renders services for a team on a day that is not otherwise a “duty day” (e.g., representing a team at an all-star game), the member’s “duty days” include such a day. “Duty days” for any member joining a team during the season shall begin on the day such person becomes a member and for any member leaving a team during the season shall end on the day such person ceases to be a member. “Duty days” do not include any try-out or pre-season cut days that a player shall survive in order to obtain a contract or any days for which a member is not compensated and is not rendering services for the team in any manner because such person has been suspended without pay and prohibited from performing any services for the team.

(3) “Duty days spent within Tennessee” means duty days on which a member of a professional athletic team renders services, or is available to render services, for the member’s team, within Tennessee. Days when a member is not available to render services for the team because of an injury are “duty days” for that member, but are not “duty days spent within Tennessee” for that member unless the team is based in Tennessee.

(4) “Compensation received for services rendered as a member of a professional athletic team” means the total compensation received for the official pre-season training

period through the last game in which the team competes or is scheduled to compete during the taxable year, plus any additional compensation received for rendering services for the team on a date that is not otherwise a “duty day” (e.g., compensation for representing a team at an all-star game) during the taxable year. “Compensation received for services rendered as a member of a professional athletic team” includes, but is not limited to, salaries, wages, guaranteed payments except as otherwise provided herein, bonuses, strike benefits, severance pay, and termination pay. Bonuses are includable in “compensation received for services rendered as a member of a professional athletic team” if they are earned as a result of play during the season or for playing in championship, playoff or “all star” games. Bonuses are also so includable if paid for signing a contract, unless all of the following conditions are met: payment of the signing bonus by a team –

(A) is solely in consideration of a nonresident athlete giving up amateur and free agent status and agreeing to be the exclusive property of the team;

(B) is not conditional upon the athlete playing any games, or performing any subsequent services, for the team, or even making the team;

(C) is separate from the payment of salary or any other compensation;
and

(D) is nonrefundable.

(k) It shall be presumed that the method provided under subsection (i) is a fair and equitable method of determining the proportion of compensation received for services rendered as a member of a professional athletic team that is derived from or connected with sources within Tennessee. However, the portion of compensation received for services rendered as a member of a professional athletic team that is derived from or connected with sources within Tennessee may be determined on the basis of a method other than that provided under subsection (i), if:

(1) the member establishes, to the satisfaction of the commissioner, that another method is fairer and more equitable, or

(2) in the discretion of the commissioner, the commissioner determines that the method provided under subsection (j) does not fairly and equitably reflect the proportion of compensation received for services rendered as a member of a professional athletic team that is derived from or connected with sources within Tennessee.

(l) In the case of a nonresident entertainer or athlete (other than a member of a professional athletic team), who is paid specifically for a performance or athletic event in Tennessee, the entire amount received is included in Tennessee adjusted gross income derived from or connected with sources within Tennessee if the entertainer or athlete is carrying on a business, trade, profession or occupation in Tennessee (and his or her presence for business in Tennessee is not casual and isolated).

(m) In the case of a nonresident entertainer who is not paid specifically for a performance in Tennessee, the entertainer's Tennessee adjusted gross income derived from or connected with sources within Tennessee includes that proportion of the entertainer's income received from performances within and without Tennessee that the number of performances that the entertainer gave (or, in the case of an understudy, was available to give) within Tennessee during the taxable year bears to the total number of performances that the entertainer was obligated to perform (or, in the case of an understudy, was obligated to be available to perform), under contract or otherwise, within and without Tennessee during the taxable year.

(n) In the case of a nonresident athlete (other than a member of a professional athletic team) who is not paid specifically for athletic events in Tennessee, the athlete's Tennessee adjusted gross income derived from or connected with sources within Tennessee includes that proportion of the athlete's income received from athletic events within and without Tennessee that the number of athletic events within Tennessee in which the athlete played during the

taxable year bears to the total number of athletic events within and without Tennessee in which the athlete played during the taxable year.

(o) Income directly or indirectly derived by an athlete, entertainer or performing artist, from closed-circuit and cable television transmissions of an event, other than events occurring on a regularly scheduled basis, taking place within this state as a result of the rendition of services by such athlete, entertainer or performing artist, shall constitute income derived from or connected with sources within this state only to the extent that such transmissions were received or exhibited within this state.

67-2-212. (a) In determining the Tennessee adjusted gross income of a resident partner of a partnership or a resident shareholder of an S corporation, any adjustments described in section 67-2-207, which relates to an item of partnership or S corporation income, gain, loss or deduction, shall be made in accordance with the partner's distributive share or a shareholder's pro rata share, for federal income tax purposes, of the item to which the modification relates. Where a partner's distributive share or a shareholder's pro rata share of any such item is not required to be taken into account separately for federal income tax purposes, the partner's or shareholder's share of such item shall be determined in accordance with the partner's or shareholder's share, for federal income tax purposes, of partnership or S corporation taxable income or loss generally.

(b) Each item of partnership and S corporation income, gain, loss or deduction shall have the same character for a partner or shareholder under this part as for federal income tax purposes. Where an item is not characterized for federal income tax purposes, it shall have the same character for a partner or shareholder as if it were realized directly from the source from which it was realized by the partnership or S corporation or as if it was incurred in the same manner as it was incurred by the partnership or S corporation.

(c) Where a partner's distributive share of an item of partnership income, gain, loss or deduction is determined for federal income tax purposes by special provision in the partnership

agreement with respect to such item, and where the principal purpose of such provision is the avoidance or evasion of tax under this part, the partner's distributive share of such item, and any modification required with respect thereto, shall be determined as if the partnership agreement made no special provision with respect to such item.

67-2-213. (a) The Tennessee adjusted gross income derived from or connected with sources within this state of a nonresident partner includes the partner's distributive share of all items of partnership income, gain, loss and deduction entering into federal adjusted gross income to the extent such items are derived from or connected with Tennessee sources.

(b) In determining the sources of a nonresident partner's income, no effect shall be given to a provision in the partnership agreement which:

(1) Characterizes payments to the partner as being for services or for the use of capital;

(2) allocates to the partner, as income or gain from sources without Tennessee, a greater proportion of the partner's distributive share of partnership income or gain than the ratio of partnership income or gain from sources without this state to partnership income or gain from all sources, except as authorized in subsection (c) of this section; or

(3) allocates to the partner a greater proportion of a partnership item of loss or deduction connected with sources within this state than the partner's proportionate share, for federal income tax purposes, of partnership loss or deduction generally, except as authorized in subsection (c) of this section.

(c) (1) The character of partnership or corporation items for a nonresident partner or S corporation shareholder shall be determined in accordance with section 67-2-212.

(2) The effect of a special provision in a partnership agreement, other than a provision referred to in subsection (b) of this section, having the principal purpose of avoidance or evasion of tax under this part, shall be determined under subsection (c) of section 67-2-212.

(d) The commissioner may, on application, authorize the use of such other methods of determining a nonresident partner's portion of partnership items derived from or connected with sources within this state, and the modifications related thereto, as may be appropriate and equitable, on such terms and conditions as the commissioner may require.

(e) The Tennessee adjusted gross income derived from or connected with sources within this state of a nonresident individual, who is a shareholder of an S corporation doing business or having the right to do business in this state, as defined in section 67-4-2004(7), includes such shareholder's pro rata share of the S corporation's separately computed income or loss entering into federal adjusted gross income to the extent such income or loss is derived from or connected with Tennessee sources.

(f) The Tennessee adjusted gross income derived from or connected with sources within this state of a nonresident individual who is a shareholder of an S corporation doing business or having the right to do business in this state, as defined in section 67-4-2004(7), does not include such shareholder's pro rata share of the S corporation's nonseparately computed income or loss entering into federal adjusted gross income.

(g) With respect to a nonresident individual who is a shareholder of an S corporation doing business or having the right to do business in Tennessee, as defined in section 67-4-2004(7), the portion of such shareholder's pro rata share of the modifications described in section 67-2-207 relating to the S corporation's:

(1) separately computed income or loss that is derived from or connected with sources within Tennessee is to be determined so as to accord with the definition of the term "derived from or connected with sources within this state" set forth in section 67-2-211;

(2) nonseparately computed income or loss is considered to be derived from or connected with sources without Tennessee.

(h) With respect to a nonresident shareholder of an S corporation neither doing business nor having the right to do business in Tennessee, as defined in section 67-4-2004(7), no portion of such shareholder's pro rata share of the S corporation's separately or nonseparately computed income or loss, or the adjustments described in section 67-2-207 that relate to S corporation items of income or gain, is considered to be derived from or connected with sources within Tennessee.

67-2-214. (a) The income derived from or connected with sources within this state of a nonresident trust or estate shall be determined as follows:

(1) There shall be determined its share of income, gain, loss and deduction from Tennessee sources under section 67-2-213.

(2) There shall be added or subtracted, as the case may be, the amount derived from or connected with Tennessee sources of any income, gain, loss and deduction which would be included in the determination of federal adjusted gross income if the trust or estate were an individual and which is recognized for federal income tax purposes but excluded from the definition of federal distributable net income of the trust or estate.

(b) Deductions with respect to capital losses and net operating losses shall be based solely on income, gains, losses and deductions derived from or connected with sources within this state, under rules or regulations of the commissioner, but otherwise determined in the same manner as the corresponding federal deductions.

(c) The share of a nonresident trust or estate in trust or estate income, gain, loss and deduction derived from or connected with sources within this state; and the share of a nonresident beneficiary of any trust or estate, in trust or estate income, gain, loss and deduction derived from or connected with sources within this state; shall be determined as follows:

(1) There shall be determined the items of income, gain, loss and deduction which are derived from or connected with sources within this state, which would be

included in the determination of federal adjusted gross income if the trust or estate were an individual and which enter into the definition of federal distributable net income of the trust or estate for the taxable year, including any such items from another trust or estate of which the subject trust or estate is a beneficiary. The determination of source shall be made in accordance with the provisions of section 67-2-208 in the same manner as for a nonresident individual.

(2) The amounts determined under subdivision (1) of this subsection shall be allocated among the trust or estate and its beneficiaries, including, solely for the purpose of this allocation, resident beneficiaries, in proportion to their respective shares of federal distributable net income.

(3) The amount allocated under subdivision (2) of this subsection shall have the same character under this part as for federal income tax purposes. Where an item entering into the computation of such amounts is not characterized for federal income tax purposes, it shall have the same character as if it were realized directly from the source from which it was realized by the trust or estate, or as if it were incurred in the same manner as it was incurred by the trust or estate.

(d) (1) If the trust or estate has no federal distributable net income for the taxable year, the share of each beneficiary, including, solely for the purpose of this allocation, resident beneficiaries, in the net amount, determined under subdivision (1) of subsection (a) of this section, shall be in proportion to the beneficiary's share of the trust or estate income for such year, under local law or the governing instrument, which is required to be distributed currently and any other amounts of such income distributed in such year. Any balance of such net amount shall be allocated to the trust or estate.

(2) The commissioner may by regulation establish such other method or methods of determining the respective shares of the beneficiaries and of the trust or estate in its income derived from sources within this state as may be appropriate and equitable. Such method may

be used by the fiduciary whenever the allocation of such respective shares under subsections (c) and (d) of this section would result in an inequity which is substantial in amount.

67-2-215. (a) Any resident individual or part-year resident individual of this state shall be allowed a credit against the tax otherwise due under this part in the amount of any income tax, levied on such resident or part-year resident for the taxable year by another state of the United States or the District of Columbia, on income derived from sources therein and which income is also subject to tax under this part.

(b) In the case of a resident, the credit provided under this section shall not exceed the proportion of the tax otherwise due under this part that the amount of the taxpayer's Tennessee adjusted gross income derived from or connected with sources in the other taxing jurisdiction bears to such taxpayer's Tennessee adjusted gross income under this part.

(c) In the case of a part-year resident, the credit provided under this section shall not exceed the proportion of the tax otherwise due during the period of residency under this part that the amount of the taxpayer's Tennessee adjusted gross income derived from or connected with sources in the other jurisdiction during the period of residency bears to such taxpayer's Tennessee adjusted gross income during the period of residency under this part, nor shall the allowance of the credit provided under this section reduce the tax otherwise due under this part to an amount less than what would have been due if the income subject to taxation by such other jurisdiction were excluded from Tennessee adjusted gross income.

(d) (1) If, as a direct result of the change to or correction of a taxpayer's income tax return, filed with another state of the United States or the District of Columbia, by the tax officers or other competent authority of such jurisdiction, the amount of tax of such other jurisdiction that the taxpayer is finally required to pay is different than the amount used to determine the credit allowed to the taxpayer under this section, the taxpayer shall provide notice of such difference to the commissioner by filing, on or before the date that is ninety days after the final determination of such amount, an amended return under this part, and shall concede the

accuracy of such determination or state wherein it is erroneous. The commissioner may redetermine, and the taxpayer shall be required to pay, the tax plus interest for any taxable year affected.

(2) If, as a direct result of a taxpayer filing an amended income tax return with another state of the United States or the District of Columbia, the amount of tax of such other jurisdiction that the taxpayer is required to pay is different than the amount used to determine the credit allowed to taxpayer under this section, the taxpayer shall provide notice of such difference to the commissioner by filing, on or before the date that is ninety days after the date of filing of such amended return, an amended return under this part and shall give such information as the commissioner may require. The commissioner may redetermine and the taxpayer shall be required to pay the tax plus interest for any taxable year affected.

(3) In the case of a redetermination of the tax owing to another state of the United States or the District of Columbia resulting in a taxpayer owing additional taxes levied by this part, the statutory period for the assessment of additional taxes resulting from such redetermination shall not expire prior to two (2) years from the date the commissioner is notified in writing by the taxpayer of such revision. In the event that such redetermination results in a refund of the taxes levied by this part, the commissioner is authorized to make such refund provided the taxpayer makes a refund claim, or the commissioner is in possession of the proper proof of the refund, within three (3) years from the date of such determination by the other state or other such jurisdiction.

(e) A taxpayer shall not be allowed credit under this section if the taxpayer has claimed or will claim a credit against the income tax levied by the other jurisdiction for the tax paid or payable under this part.

(f) There shall be no credit for interest or penalties paid to another state or to the District of Columbia.

67-2-216. (a) (1) With respect to each of its nonresident partners or shareholders, each pass-through entity, doing business in this state or having income derived from or connected with sources within this state, shall for each taxable period, either:

(A) timely file with the commissioner an agreement as provided in subdivision (2) of this subsection, or

(B) make payment to the commissioner as provided in subdivision (3) or subdivision (4) of this subsection.

Any pass-through entity which timely files an agreement as provided in such subdivision (2) with respect to a nonresident partner or shareholder for a taxable period shall be considered to have timely filed such an agreement for each subsequent taxable period. Any pass-through entity which does not timely file such an agreement for a taxable period shall not be precluded from timely filing such an agreement for subsequent taxable periods.

(2) An agreement under this subdivision shall be an agreement, on a form as may be prescribed by the commissioner, by a nonresident partner or shareholder of the pass-through entity:

(A) to file returns in accordance with all applicable provisions of title 67 and to make timely payment of all taxes levied on the partner or shareholder by this state measured by the income of the pass-through entity, and

(B) to be subject to personal jurisdiction in this state for purposes of the collection of all taxes, together with related additions to tax, interest and penalties, levied on the partner or shareholder by this state measured by the income of the pass-through entity.

Such an agreement shall be considered timely filed for a taxable period and for all subsequent taxable periods if it is filed on or before the date the annual return for such taxable period is required to be filed pursuant to section 67-2-218, including extensions.

(3) For S corporations, the payment shall be in an amount equal to the tax rate provided for in section 67-2-204 multiplied by the sum of:

(A) To the extent derived from or connected with sources within this state as reflected on the S corporation's annual return for the taxable period under section 67-2-218, the amount of the subject shareholder's pro rata share of the S corporation's separately computed items, as defined in section 1366 of the Internal Revenue Code; and

(B) To the extent derived from or connected with sources within this state as reflected on the S corporation's annual return for the taxable period under section 67-2-218, the amount of such shareholder's pro rata share of the S corporation's nonseparately computed items, as defined in section 1366 of the Internal Revenue Code, to the extent includable, if the shareholder is an individual, in the shareholder's Tennessee adjusted gross income, or, if the shareholder is a trust or estate, in shareholder's Tennessee taxable income.

(4) For pass-through entities other than S corporations, the payment shall be in an amount equal to the tax rate provided for in section 67-2-204 multiplied by, to the extent derived from or connected with sources within this state as reflected on the entity's annual return for the taxable period under section 67-2-218, the amount of the subject partner's distributive share of the entity's income determined under section 704 of the Internal Revenue Code.

(5) Any amount paid by the pass-through entity to this state with respect to any taxable period, pursuant to subdivision (3) or (4) of this subsection, shall be considered to be a payment by the partner or shareholder on account of the tax measured by income levied on the partner or shareholder for such taxable period pursuant to this part. A pass-through entity shall be entitled to recover, by off-set or otherwise, a payment made pursuant to this subdivision from the partner or shareholder on whose behalf the payment was made. Any estimated tax installment shall be made on or before the due date of such installment pursuant to section 67-2-219, and any other payment for a taxable period shall be made at or before the date the annual return for such taxable period is required to be filed pursuant to section 67-2-218.

(b) In lieu of partners or shareholders of pass-through entities filing separate returns under section 67-2-219, the commissioner may provide for the filing of a group return for electing nonresident partners or shareholders by a pass-through entity doing business in this state, as defined in section 67-4-2004(7), or having income derived from or connected with sources within this state. As required by the commissioner, the pass-through entity as agent for the electing partners or shareholders shall make the payments of tax, estimated tax, additions to tax, interest, and penalties otherwise required to be paid by the electing partners or shareholders. The provisions of this subsection shall also apply to trusts and estates, and whenever reference is made in this subsection to pass-through entities and partners, such reference shall be construed as including trusts, estates and beneficiaries thereof.

67-2-217. (a) In lieu of members of professional athletic teams filing separate returns, under section 67-2-219, the commissioner may provide for the filing of a composite return for every qualifying nonresident member of a professional athletic team by such team, if such team is doing business in this state or the members of such team have compensation which is received for services rendered as members of such team and which is derived from or connected with sources within this state.

(b) If a professional athletic team is required to file a composite return pursuant to this section, the commissioner may require such team, in lieu of deducting and withholding Tennessee income tax as may otherwise be required under section 67-2-222, to make payment to the commissioner of tax, estimated tax, additions to tax, interest, and penalties otherwise required to be paid to the commissioner by such qualifying nonresident members.

(c) The commissioner may require a professional athletic team, in lieu of deducting and withholding Tennessee income tax as may otherwise be required under section 67-2-222, to make payment to the commissioner of tax, estimated tax, additions to tax, interest, and penalties otherwise required to be paid to the commissioner by:

(1) every resident member, but only with respect to compensation which is received for services rendered as a member of a professional athletic team; and

(2) every nonresident member who is not a qualifying nonresident member, but only with respect to compensation which is received for services rendered as a member of a professional athletic team and which is derived from or connected with sources within this state.

(d) Any amount paid by a professional athletic team to this state with respect to any taxable period pursuant to this section shall be considered to be a payment by the member on account of the income tax levied on the member for such taxable period pursuant to this part. The team shall be entitled to recover a payment made pursuant to this section from the member on whose behalf the payment was made.

(e) For purposes of this section, "qualifying nonresident member" means a member of a professional athletic team who is a nonresident individual for the entire taxable year, who does not maintain a permanent place of abode in Tennessee at any time during the taxable year, who does not have income derived from or connected with sources within this state other than compensation which is received for services rendered as a member of a professional athletic team and which is derived from or connected with sources within this state.

67-2-218. (a) Each partnership having any income derived from sources in this state, determined in accordance with the provisions of this part, shall make a return for the taxable year setting forth all items of income, gain, loss and deduction; the name, address and social security or federal employer identification number of each partner, whether or not a resident of this state, who would be entitled to share in the net income if distributed; the amount of the distributive share of each partner derived from or connected with sources within this state; the amount of the distributive share of each partner derived from or connected with sources without this state; and such other pertinent information as the commissioner may prescribe by regulations or instructions. Such return shall be filed on or before the fifteenth day of the fourth

month following the close of each taxable year. The partnership shall, on or before the day on which such return is filed, furnish to each person, who was a partner during the taxable year, a copy of such information as shown on the return. The provisions of this subsection shall also apply to trusts and estates, and their beneficiaries. Wherever reference is made in this subsection to partnerships and their partners, such reference shall be construed as including trusts and estates and their beneficiaries, respectively.

(b) Each S corporation doing business in this state, as defined in section 67-4-2004(7), shall make a return for the taxable year setting forth all items of income, gain, loss and deduction; the name, address and social security or federal employer identification number of each shareholder; the pro rata share of each shareholder of S corporation income derived from or connected with sources within this state; the pro rata share of each shareholder of S corporation income derived from or connected with sources without this state; and such other pertinent information as the commissioner may prescribe by regulations or instructions. Such return shall be filed on or before the fifteenth day of the fourth month following the close of each taxable year. The S corporation shall, on or before the day on which such return is filed, furnish to each person, who was a shareholder during the taxable year, a copy of such information as shown on the return.

67-2-219. (a) A taxpayer with Tennessee taxable income shall file a Tennessee tax return with the commissioner on or before the fifteenth day of the fourth month following the close of the taxpayer's taxable year, containing such information as the commissioner may reasonably require, and on forms as prescribed by the commissioner. The commissioner is authorized to require taxpayers to include with the return copies of their federal tax return, including withholding statements, schedules and forms. The return shall coincide with the tax period covered by the taxpayer's federal return.

(b) Without assessment, notice or demand, the taxpayer shall pay any tax due to the commissioner on or before the due date of the return, without regard to any extension of time for filing the return.

(c) For purposes of this section, there shall be four required installments for each taxable year. The due date for the first required installment is the fifteenth day of the fourth month of the taxable year. The due date for the second required installment is the fifteenth day of the sixth month of the taxable year. The due date for the third required installment is the fifteenth day of the ninth month of the taxable year. The due date for the fourth required installment is the fifteenth day of the first month of the next succeeding taxable year.

(d) (1) Except as provided in subdivision (2) of this subsection, the amount of any required installment shall be twenty-five percent of the required annual payment, as defined in subsection (o) of this section.

(2) (A) In the case of any required installment, if the taxpayer establishes that the annualized income installment is less than the amount determined under subdivision (1) of this subsection, the amount of such required installment shall be the annualized income installment, and any reduction in a required installment resulting from the application of this subdivision shall be recaptured by increasing the amount of the next required installment by the amount of such reduction and by increasing subsequent required installments to the extent that the reduction has not previously been recaptured under this subdivision.

(B) In the case of any required installment, the annualized income installment is the excess, if any, of:

(i) an amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the Tennessee taxable income for months in the taxable year ending before the due date for the installment, over

(ii) the aggregate amount of any prior required installments for the taxable year.

(C) For purposes of this subdivision (2), the applicable percentage for the first required installment is twenty-two and one-half percent (22.5%), the applicable percentage for the second required installment is forty-five percent (45%), the applicable percentage for the third required installment is sixty-seven and one-half percent (67.5%), and the applicable percentage for the fourth required installment is ninety percent (90%).

(e) For purposes of subsection (f) of this section, the amount of the underpayment shall be the excess of the required installment, over the amount, if any, of the installment paid on or before the due date for the installment. For purposes of subsection (f) of this section, the period of the underpayment shall run from the due date for the installment to whichever of the following dates is earlier: the fifteenth day of the fourth month of the next succeeding taxable year, or, with respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this subsection, a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(f) Except as otherwise provided in this section, in the case of any underpayment of estimated tax by an individual, there shall be added to the tax an amount determined by applying interest at the rate prescribed by section 67-1-801(a) to the amount of the underpayment for the period of the underpayment.

(g) The application of this section to taxable years of less than twelve months shall be in accordance with regulations adopted by the commissioner.

(h) Payment of the estimated income tax, or any installment thereof, shall be considered payment on account of the income tax levied under this part for the taxable year.

(i) If an individual has paid as an installment of estimated tax an amount in excess of the amount determined to be the correct amount of such installment, such amount shall be credited against any unpaid installment or against the tax. If the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, then, unless the individual has given written notice to the commissioner that such overpayment

is to be refunded, such overpayment shall be credited against any installment of estimated tax due for the next succeeding taxable year.

(j) (1) If the tax, reduced by the tax withheld under this part, shown on the return or otherwise, is five hundred dollars or less, no addition to tax shall be levied under subsection (f) of this section.

(2) No addition to tax shall be levied under subsection (f) of this section for any taxable year if:

(A) the preceding taxable year was a taxable year of twelve months, and

(B) the individual did not have any liability for tax for the preceding taxable year and throughout such year the individual was:

(i) a resident individual, or

(ii) a nonresident individual or part-year resident individual with income, gain, loss or deduction derived from or connected with sources within this state.

(k) For purposes of applying this section, the tax withheld under this part shall be deemed a payment of estimated tax, and an equal part of such tax withheld shall be deemed paid on each due date for such taxable year, unless the taxpayer establishes the dates on which such tax was actually withheld, in which case the tax so withheld shall be deemed payments of estimated tax on the dates on which such tax was actually withheld.

(l) If, on or before January 31 of the following taxable year, the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, then no addition to tax shall be levied under subsection (f) of this section with respect to any underpayment of the fourth required installment for the taxable year.

(m) For purposes of this section, if an individual is a farmer or fisherman for any taxable year, the following provisions shall apply:

(1) There shall be only one required installment for the taxable year;

(2) the due date for such installment shall be January 15 of the following taxable year;

(3) the amount of such installment shall be equal to the lesser of:

(A) sixty-six and two-thirds percent (66.67%) of the tax shown on the return for the taxable year, or, if no return is filed, sixty-six and two-thirds percent (66.67%) of the tax for such year, or

(B) if the preceding taxable year was a taxable year of twelve months and the individual filed a return for the preceding taxable year, one hundred percent of the tax shown on the return for the preceding taxable year;

(4) If, on or before March 1 of the following taxable year, the farmer or fisherman files a return and pays in full the amount computed on the return as payable, no addition to tax shall be levied under subsection (f) of this section with respect to any underpayment of the required installment, as provided in subdivision (3) of this subsection, for the taxable year; and

(5) an individual is a farmer or fisherman for any taxable year if such individual is a farmer or fisherman, as defined in Section 6654(i)(2) of the Internal Revenue Code, for the taxable year.

(n) (1) Except as otherwise provided in this subsection, this section shall apply to any trust or estate.

(2) With respect to any taxable year ending before the date two years after the date of the decedent's death, this section shall not apply to:

(A) the estate of such decedent, or

(B) any trust:

(i) all of which was treated under sections 671 to 679, inclusive, of the Internal Revenue Code as owned by the decedent, and

(ii) to which the residue of the decedent's estate will pass under the will or, if no will is admitted to probate, which is the trust primarily responsible for paying debts, taxes, and expenses of administration.

(3) In the case of any trust or estate to which this section applies, for any required installment, the annualized income installment is the excess, if any, of:

(A) an amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the Tennessee taxable income and the adjusted federal alternative minimum taxable income for months in the taxable year ending before the date one month before the due date for the installment, over

(B) the aggregate amount of any prior required installments for the taxable year.

(o) "Required annual payment" means the lesser of:

(1) ninety percent of the tax shown on the return for the taxable year, or if no return is filed, ninety percent of the tax for such year, or

(2) if the preceding taxable year was a taxable year of twelve months and the taxpayer filed a return for the preceding taxable year, one hundred percent of the tax shown on the return of the taxpayer for such preceding taxable year.

67-2-220. (a) An extension of time of four months in which to file any return, statement or other document due or required under this part will be granted, provided that on or before the original due date of the return, the taxpayer makes the request and pays taxes equal to one hundred percent of the liability for the tax year for which the extension is being requested, and the extension request is made on a form prescribed by the department. The commissioner may require the filing of a tentative return and the payment of the tax reported to be due thereon in connection with any extension. Any additional tax which may be found to be due on the filing of a return, statement or other document as allowed by such extension shall bear interest at the rate prescribed by section 67-1-801(a) from the original due date of such tax to the date of actual payment. Notwithstanding the provisions of section 67-2-221, no penalty shall be

imposed on account of any failure to pay the amount of tax reported to be due on a return, statement or other document within the time specified under the provisions of this part if the excess of the amount of tax shown on the return, statement or other document over the amount of tax paid on or before the original due date of such return, statement or other document is no greater than ten percent of the amount of tax shown on such return, statement or other document, and any balance due shown on such return, statement or other document is paid on or before the extended due date of such return, statement or other document.

(b) The commissioner may, in the commissioner's sole discretion, grant an additional extension of time of no more than two months in which to file the return required by this part, on good and reasonable cause shown by the taxpayer before the due date of the return as extended under the provisions of subsection (a) of this section; provided, however, that if the taxpayer shows, within the time prescribed by this subsection, and on such form as may be prescribed by the commissioner, that the Internal Revenue Service has granted the taxpayer an extension of time to file the taxpayer's federal income tax return for the same taxable year, then the commissioner shall grant the taxpayer an extension of like amount to file the Tennessee tax return.

67-2-221. (a) If any taxpayer fails to pay the amount of tax reported to be due on the taxpayer's return within the time specified under the provisions of this part, there shall be imposed a penalty equal to ten percent of such amount due and unpaid. Such amount shall also bear interest at the rate prescribed by section 67-1-801(a) from the due date of such tax until the date of payment.

(b) The commissioner may waive all or part of the penalties provided under this part, subject to the provisions of section 67-1-803.

(c) In case of each failure to file a statement of payment to another person required under the authority of this part, including the duplicate statement of tax withheld on wages on the date prescribed therefor, determined with regard to any extension of time for filing, there

shall be paid, upon notice and demand by the commissioner, by the person so failing to file the statement, a penalty of five dollars for each statement not so filed, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed two thousand dollars. The commissioner may waive this penalty subject to the provisions of section 67-1-803.

67-2-222. (a) Each employer, maintaining an office or transacting business within this state and making payment of any wages taxable under this part to a resident or nonresident individual, shall deduct and withhold from such wages for each payroll period a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due from the employee under this part with respect to the amount of such wages during the calendar year. The method of determining the amount to be withheld shall be prescribed by rules or regulations issued by the commissioner.

(b) The commissioner may by rule or regulation require persons other than employers:

(1) to deduct and withhold taxes from payments made by such persons to residents of this state, nonresidents and part-year residents;

(2) to file a withholding return as prescribed by the commissioner; and

(3) to pay over to the commissioner, or to a depository designated by the commissioner, the taxes so required to be deducted and withheld, in accordance with a schedule established in such regulations.

(c) The commissioner may adopt regulations providing for withholding from:

(1) remuneration for services performed by an employee for the employer which does not constitute wages;

(2) wages paid to an employee by an employer not maintaining an office or transacting business within this state; or

(3) any other type of payment with respect to which the commissioner finds that withholding would be appropriate under the provisions of this part if the employer and the employee, or, in the case of any other type of payment, the person making and the person receiving such payment, agree to such withholding. Such agreement shall be made in such form and manner as the commissioner may, by regulation, prescribe. For purposes of this part remuneration, wages or other payments with respect to which such an agreement is made shall be regarded as if they were wages paid to an employee by an employer maintaining an office or transacting business within this state to the extent that such remuneration or wages are paid or other payments are made during the period for which the agreement is in effect.

(d) Where any person who is not an employer is required by rule to withhold wages or other payments, the provisions of this section apply to such person as if the person were an employer and as if all amounts withheld were wages.

(e) Every employer, irrespective of whether or not such employer deducted and withheld the amounts as provided in this section, shall be liable for the amounts required to be deducted and withheld. If the employer, in violation of the provisions of this section, fails to deduct and withhold the amounts so provided and thereafter the tax, against which such amounts would have been credited, is paid, the amounts so required by this section to be deducted and withheld shall not be collected from the employer; but in no such case shall the employer be relieved from liability for any penalties, interest or additions to the amounts required under this section to be deducted and withheld otherwise applicable to any such failure to deduct and withhold.

(f) Every employer subject to the provisions of this section shall file a return, in such form as shall be determined by the commissioner, and remit the amount withheld at the same times the employer is required under federal law and regulations to pay over federal taxes

required to be deducted and withheld. Failure to remit timely the amount withheld shall subject the employer to those penalties and interest described in section 67-1-801.

(g) Every employer who deducts and withholds any amounts under the provisions of this section shall hold the same in trust for the state of Tennessee for the payment thereof to the commissioner in the manner and at the time provided in this section. To secure the payment of any amounts withheld and not remitted as required by this section, the state shall have a lien upon all interests in property, either real or personal, tangible or intangible, owned or subsequently acquired by the employer, so long as any delinquency continues. The lien of the state shall be entitled to priority over any other lien of any kind whatsoever with regard to such trust fund taxes whether or not notice of the lien has been filed.

(h) All amounts deducted, withheld and remitted shall be considered as tax collected under the provisions of this section and no employee shall have any right of action against an employer in respect to any monies so deducted and withheld from wages and paid over to the commissioner in compliance or intended compliance with this section.

(i) Every employer required to deduct and withhold tax under this part from the wages of an employee shall furnish to each such employee in respect to the wages paid by such employer to such employee during the calendar year, on or before January 31 of the next succeeding year, a written statement as prescribed by the commissioner showing the amount of wages paid by the employer to the employee, the amount deducted and withheld as tax, and such other information as the commissioner shall prescribe.

(j) Every employer shall also file an annual statement with the commissioner summarizing the total compensation paid and the tax withheld for such employee during the preceding calendar year or any portion thereof, and providing such other information required by the commissioner. The statement shall be filed on or before March 1 of the year following that for which the report is made and shall be on such forms as prescribed by the commissioner.

(k) Failure to file the statements required by subsection (j) of this section within the time prescribed therefor shall subject the employer to a penalty of five hundred dollars (\$500) for each such failure, which shall be in addition to any criminal penalty otherwise provided for failure to file a return or for filing a false or fraudulent return. The commissioner may waive this penalty subject to the provisions of section 67-1-803.

(l) No later than fifteen days after becoming subject to the withholding provisions of this section, every employer shall register with the department by completing and filing a registration information form prescribed by the commissioner. Whenever an employer ceases doing business, or for any other reason is no longer subject to the withholding provisions of this section, it shall so notify the commissioner within fifteen days thereof. Any employer who fails timely to register or notify the commissioner shall be subject to a penalty of one thousand dollars (\$1,000). The commissioner may waive this penalty subject to the provisions of section 67-1-803.

(m)(1) Liability for taxes or withholding under this part may be challenged only upon compliance with the provisions of section 67-1-1801 or section 67-1-1802, except as provided in section 67-2-236(a).

(2) No court shall enjoin payment, withholding or collection of the tax levied under this part, and no court shall enjoin or in any manner impede reporting, administration, or enforcement under this part, except that collection or withholding from a plaintiff in a suit instituted in compliance with Section 67-1-1801 shall be stayed upon that plaintiff's compliance with the provisions for stay set out in that section.

(n) The commissioner may establish by rule periodic filing and payment dates in those instances where the commissioner deems it to be in the best interests of the state to do so.

(o) Wages upon which tax is required to be withheld shall be taxable under this part as if no withholding were required, but any amount of tax actually deducted and withheld in any calendar year shall be deemed to have been paid to the commissioner on behalf of the person

from whom withheld, and such person shall be credited with having paid that amount of tax for the taxable year beginning in such calendar year.

(p) The commissioner may adopt regulations requiring returns of information to be made and filed on or before April 15 of each year by any person making payment or crediting in any calendar year amounts of one hundred dollars (\$100) or more, or ten dollars (\$10) or more in the case of interest or dividends, to any person who may be subject to the tax levied under this part. Such returns may be required of any person, including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of this state, or of any municipal corporation or political subdivision of this state, having the control, receipt, custody, disposal or payment of dividends, interest, rents, salaries, wages, premiums, annuities, compensations, remuneration, pensions, gambling winnings, emoluments or other fixed or determinable gains, profits, or income, except interest coupons payable to bearer. The commissioner may also require that persons making the returns under this subsection furnish to their payees, on or before January thirty-first of the next succeeding year, a written statement as prescribed by the commissioner showing the amount of payment which has been reported to the commissioner in respect of such payee.

67-2-223. Employers shall also be subject to the provisions of section 67-1-703 relative to payment in immediately available funds and electronic filings. Notwithstanding the provisions of section 67-1-703 to the contrary, an employer who is required by federal law to file its return electronically and/or to make payment of withheld taxes in immediately available funds, shall file and pay its Tennessee return and liability in like manner.

67-2-224. (a) If the amount of any taxpayer's adjusted gross income or taxable income reported on the taxpayer's federal income tax return for any taxable year is changed or corrected by the United States Internal Revenue Service or other competent authority, or as the result of a renegotiation of a contract or subcontract with the United States, resulting in a change in the amount of tax due under this part, the taxpayer shall pay any additional tax due,

plus interest, and file an amended return under this part, or such other form as the commissioner shall prescribe, reporting such change or correction, within ninety (90) days after the final determination of such change, correction, or renegotiation, and shall concede the accuracy of such determination or state wherein it is erroneous.

(b) Any taxpayer filing an amended federal income tax return shall also file within ninety (90) days thereafter an amended return under this part and pay any additional tax due, plus interest pursuant to section 67-1-801.

(c) In the case of a redetermination of adjusted gross income by the internal revenue service resulting in a taxpayer owing additional taxes levied by this part, the statutory period for the assessment of additional taxes resulting from such redetermination shall not expire prior to two (2) years from the date the commissioner or the commissioner's delegate is notified in writing by the taxpayer of such revision. In the event that such redetermination results in a refund of the taxes levied by this part, the commissioner is authorized to make such refund provided the taxpayer makes a refund claim, or the commissioner is in possession of the proper proof of the refund, within three (3) years from the date of such determination by the internal revenue service.

67-2-225. (a) The commissioner is authorized to enter into an agreement with the secretary of the treasury of the United States or the secretary's delegate, under which the secretary or the delegate will assist in the overall administration of the tax levied by this part. The cost of the services performed by the secretary or the delegate in such activities under the terms of any agreement may be paid from the appropriations for the general operations of the department of revenue.

(b) The commissioner is authorized to enter into an agreement with the secretary of the treasury of the United States or the secretary's delegate, under which the commissioner will assist in the overall administration of tax administration functions in respect to the federal

income tax. Such agreement shall make provision for the payment by the United States of costs of the services performed on its behalf.

(c) The commissioner may enter into agreements with the secretary of the treasury of the United States to provide for the compliance with this part of each department or agency of the United States in withholding of state income taxes from the wages of federal employees and paying the same to this state.

(d) The commissioner may enter into agreements with the tax officers of other states, which require income tax to be withheld from the payment of wages and salaries, so as to govern the amounts to be withheld from the wages and salaries of residents of such states under this part. Such agreements may provide for recognition of anticipated tax credits in determining the amounts to be withheld and, under regulations prescribed by said commissioner, may relieve employers in this state from withholding income tax on wages and salaries paid to nonresident employees. The agreements authorized by this subsection are subject to the condition that the tax officers of such other states grant similar treatment to residents of this state.

67-2-226. (a) Any return, declaration, statement or other document required to be made pursuant to this part shall be signed if required by, and then in accordance with, regulations adopted or instructions prescribed by the commissioner. The fact that an individual's name is signed to a return, declaration, statement or other document shall be prima facie evidence for all purposes that the return, declaration, statement or other document was actually signed by such individual.

(b) Any return, statement or other document required of a partnership shall be signed by one or more partners if required by and then in accordance with regulations adopted or instructions prescribed by the commissioner. The fact that a partner's name is signed to a return, statement or other document shall be prima facie evidence for all purposes that such partner is authorized to sign on behalf of the partnership.

(c) Any return, statement or other document required of an S corporation shall be signed by one or more officers if required by and then in accordance with regulations adopted or instructions prescribed by the commissioner. The fact that an officer's name is signed to a return, statement or other document shall be prima facie evidence for all purposes that such officer is authorized to sign on behalf of the S corporation.

(d) The making or filing of any return, declaration, statement or other document or copy thereof required to be made or filed pursuant to this part, including a copy of a federal income tax return, shall constitute a certification by the person making or filing such return, declaration, statement or other document or copy thereof that the statements contained therein are true and that any copy filed is a true copy.

67-2-227. Any person, required to collect or withhold, truthfully account for and pay over the tax levied under this part, who willfully fails to collect or withhold such tax or truthfully account for and pay over such tax, shall be liable for the total amount of the tax evaded, or not accounted for and paid over, plus interest thereon, and a penalty equal in amount to the total tax evaded, or not collected, or not accounted for and paid over.

67-2-228. A nonresident who withholds taxes in compliance with this part shall not be found to be doing business in this state solely by reason of such withholding.

67-2-229. No tax levied on any taxpayer by the provisions of this part shall be reduced, modified, obligated or expended as an incentive for any person to conduct, locate or expand any business in this state. Nothing in this section shall prohibit the general assembly from appropriating any funds for this purpose.

67-2-230. Any husband and wife who elect to file a joint return under the federal income tax for any taxable year shall be required to file jointly with respect to such taxable year for purposes of this part, in which event their tax liability shall be joint and several, except as otherwise provided in section 67-2-231, and any husband and wife, who elect to file separately

under the federal income tax for any taxable year, shall be required to file separately with respect to such taxable year for purposes of this part; provided:

(1) if either the husband or wife is a resident and the other is a nonresident, separate taxes shall be determined on their separate Tennessee taxable incomes on separate forms as married individuals filing separately unless such husband and wife determine their federal taxable income jointly and both elect to determine their joint Tennessee taxable income as if both were residents; or

(2) if any husband and wife, both of whom are nonresidents, elect to file a joint return under the federal income tax for any taxable year, and only one of them has income derived from or connected with sources within this state during such taxable year, only the spouse with income derived from or connected with sources within this state shall be required to file a return in this state; and if only the spouse with income derived from or connected with this state files such a return in this state, a separate tax shall be determined on such spouse's separate Tennessee taxable income as a married individual filing separately, unless such husband and wife both elect to determine their joint Tennessee taxable income as if both had income derived from or connected with sources within this state.

67-2-231. (a) Any individual who has made a joint return under this part may elect to seek relief under the provisions of subsection (b) of this section and if such individual is eligible to elect the application of subsection (c) of this section, such individual may in addition to any election under subsection (b) of this section, elect to limit such individual's liability for any deficiency with respect to such joint return in the manner prescribed under subsection (c) of this section.

(b) (1) Under procedures prescribed by section 67-1-1801 for taxpayer conferences, if:

(A) a joint return has been made for a taxable year and on such return there is an understatement of tax attributable to erroneous items of one individual filing the joint return;

(B) the other individual filing the joint return establishes that in signing the return such other individual did not know, and had no reason to know, that there was such an understatement;

(C) taking into account all the facts and circumstances, it is inequitable to hold such other individual liable for the deficiency in tax for such taxable year attributable to such understatement or portion of such understatement, as the case may be; and

(D) such other individual elects the application of this subsection, in such form as the commissioner may prescribe, not later than the date which is two years after the date the commissioner has begun collection activities with respect to the individual making the election; then such other individual shall be relieved of liability for tax, including interest, penalties and other amounts due for such taxable year to the extent such liability is attributable to such understatement.

(2) If the electing individual satisfies the conditions of subdivision (1) of this subsection except subdivision (1)(B), and establishes that in signing the return such individual did not know, and had no reason to know, the extent of such understatement, such individual shall be relieved of liability for tax, including interest, penalties and other amounts due for such taxable year to the extent such liability is attributable to the portion of such understatement of which such individual did not know and had no reason to know.

(c) (1) If an individual who has made a joint return for any taxable year elects the application of this subsection, the individual's liability for any deficiency which is assessed with respect to the return shall not exceed the portion of such deficiency properly allocable to such individual under subsection (d) of this section.

(2) The electing individual shall have the burden of proof with respect to establishing the portion of any deficiency allocable to such individual.

(3) An individual shall be eligible to elect the application of this subsection if:

(A) at the time such election is filed, such individual is no longer married to, or is legally separated from, the individual with whom such individual filed the joint return to which the election relates; or

(B) such individual was not a member of the same household as the individual with whom such joint return was filed at any time during the twelve-month period ending on the date such election is filed.

(4) If assets were transferred between individuals filing a joint return as part of a fraudulent scheme by such individuals, an election under this subsection by either individual shall be invalid.

(5) If the individual electing under this subsection had actual knowledge, at the time such individual signed the return, of any item giving rise to a deficiency or portion thereof which is not allocable to such individual under subsection (d) of this section, the election shall not apply to such deficiency or portion thereof, unless the individual with actual knowledge establishes that the electing individual signed the return under duress.

(6) The portion of the deficiency for which the individual electing under this subsection is liable shall be increased by the value of any disqualified asset transferred to the individual. For purposes of this section, "disqualified asset" means any property or right to property transferred to an electing individual with respect to a joint return by the other individual filing such joint return if the principal purpose of the transfer was the avoidance of tax or payment of tax. Any transfer which is made after the date which is one year before the date on which a notice of proposed deficiency assessment is sent, other than any transfer pursuant to a decree of divorce or separate maintenance or a written instrument incident to such a decree or to any transfer which an individual establishes did not have as its principal purpose the avoidance of tax or

payment of tax, shall be presumed to have as its principal purpose the avoidance of tax or payment of tax.

(d) (1) The portion of any deficiency on a joint return allocated to an individual electing under subsection (c) of this section shall be the amount which bears the same ratio to such deficiency as the net amount of items taken into account in computing the deficiency and allocable to the individual under this subdivision bears to the net amount of all items taken into account in computing the deficiency.

(2) If a deficiency or portion thereof is attributable to the disallowance of a credit, and such item is allocated to one individual under subdivision (3) of this subsection, such deficiency or portion thereof shall be allocated to such individual. Any such item shall not be taken into account under subdivision (1) of this subsection.

(3) Except as provided in subdivisions (4) and (5) of this subsection, any item giving rise to a deficiency on a joint return shall be allocated to individuals filing the return in the same manner as it would have been allocated if the individuals had filed separate returns for the taxable year. If the allocation of any item is appropriate due to fraud of one or both individuals, the commissioner may provide for such allocation in a manner as prescribed in regulations adopted in accordance with chapter 1 of title 67.

(4) If an exemption under section 67-2-206 or a credit under section 67-2-215 would be disallowed in its entirety solely because a separate return is filed, such disallowance shall be disregarded and the item shall be computed as if a joint return had been filed and then allocated between the joint filers appropriately.

(5) If the liability of a child of a taxpayer is included on a joint return, such liability shall be disregarded in computing the separate liability of either joint filer and such liability shall be allocated appropriately between the joint filers.

(e) The commissioner shall conduct an informal conference, determine what relief, if any, is available to an electing individual under this section, issue a conference decision, and

give the individual written notification of the decision in the manner prescribed for informal conferences pursuant to section 67-1-1801.

(f) The commissioner shall, by mail at the last known address, notify the non-electing individual filing the joint return of the election and offer that individual an opportunity to participate in any informal conference.

67-2-232. The commissioner may provide that nonresident persons whose income derived from or connected with sources in this state is de minimis, are exempt from the tax levied by this part.

67-2-233. The taxes collected under this part shall be distributed as follows:

(a)(1) For purposes of this subsection, "base amount" shall be defined, for each county and each incorporated municipality, as 125% of the average of distributions received pursuant to section 67-2-119, in July of 1997, 1998 and 1999, except as provided in subdivision (2). Any known erroneous payments will be corrected before calculating the average.

(2) In the case of an incorporated municipality , which solely because of its date of incorporation did not receive a distribution in 1997, "base amount" means 125% of the average of distributions received in 1998 and 1999. In the case of an incorporated municipality, which solely because of its date of incorporation, received a distribution only in 1999, "base amount" means 125% of the amount of the 1999 distribution. In the case of an incorporated municipality, which solely because of its date of incorporation, received its first distribution in July 2000, "base amount" means 125% of the 2000 distribution.

(3) In July 2001 each county and each incorporated municipality shall be paid its base amount.

(4) Beginning in July 2002 and continuing through July 2005, each county and each incorporated municipality shall be paid its "adjusted base amount," which shall be the amount of the distribution received the prior July, increased or decreased by the percentage change in

total collections under this part from the second preceding fiscal year to the immediately preceding fiscal year.

(5) In July 2006, the distributions to counties and municipalities will be adjusted as follows: Ninety percent of the sum of the adjusted base amounts of all counties and municipalities will be distributed as provided in subdivision (4). Ten percent of the sum of the adjusted base amounts of all counties and municipalities will be distributed based on population, as defined in subdivision (6). For purposes of this subsection, the total amount distributed based on population shall be referred to as the "population amount."

(6)(A) The percentage share of the population amount distributed to incorporated municipalities equals the total certified state population residing within municipal corporate limits expressed as a percentage of total state population. Each municipality's percentage share of the aggregate municipal population amount equals such municipality's percentage share of the total certified population of all incorporated municipalities in the state.

(B) The percentage share of the population amount distributed to counties equals the total certified state population not residing within the corporate limits expressed as a percentage of total state population. Each county's percentage share of the aggregate county population amount equals such county's total population as a percentage share of the total certified state population.

(7) The population amount shall be changed each year as follows:

2007: Twenty percent of the sum of the adjusted base amounts;

2008: Thirty percent of the sum of the adjusted base amounts;

2009: Forty percent of the sum of the adjusted base amounts;

2010: Fifty percent of the sum of the adjusted base amounts;

2011: Sixty percent of the sum of the adjusted base amounts;

2012: Seventy percent of the sum of the adjusted base amounts;

2013: Eighty percent of the sum of the adjusted base amounts;

2014: Ninety percent of the sum of the adjusted base amounts.

(8) Beginning in July 2015 and thereafter, one hundred percent of the sum of the adjusted base amounts of all counties and municipalities shall be distributed based on population.

(b)(1) Beginning in July 2004, one-half of one percent (0.5%) of the revenue generated from the tax levied by this part shall be appropriated to the several incorporated municipalities within the state to be allocated and distributed to them by the commissioner of finance and administration in the proportion as the population of each municipality bears to the aggregate population of all municipalities within the state by the latest federal census and other censuses authorized by law. Municipalities incorporated subsequent to the last decennial federal census shall, until the next decennial federal census, be eligible for an allotment, commencing on July 1, following incorporation, election and installment of officials, on the population basis determined under regulations of the state planning office and certified by that office to the commissioner; provided, that an accurate census of population has been certified to the state planning office by the municipality. Municipalities now participating in allocation shall continue to do so on the basis of their population determined according to law.

(2) Any municipality shall have the right to take not more than one special census at its own expense at any time during the interim between the regular decennial federal censuses. Such right shall include the current decennium. Any such census shall be taken by the federal bureau of census, or in a manner directed by and satisfactory to the state planning office. The population of the municipality shall be revised in accordance with the special census for purposes of distribution of such funds, effective on the next July following the certification of the census results by the federal bureau of the census or the state planning office to the commissioner of finance and administration; the aggregate population shall likewise be adjusted in accordance with any such special census, effective the same date as aforementioned;

(3) Any such other special census of the entire municipality taken in the same manner provided herein, under any other law, shall be used for the distribution of such funds, and in that case, no additional special census shall be taken under the provisions of this section.

(c) Beginning in July 2004, one-half of one percent (0.5%) of the revenue generated from the tax levied by this part shall be appropriated to the several counties within the state to be allocated and distributed to them by the commissioner of finance and administration in the proportion as the total population of each county bears to the aggregate population of all counties within the state by the latest federal census and other censuses authorized by law.

(d) From the revenue generated from the tax levied by this part, to the extent it is derived from items treated and reported as long-term capital gain for federal income tax purposes, the first fifty million dollars (\$50,000,000) shall be deposited to the state general fund and the remainder shall be deposited to the revenue fluctuation fund.

(e) All other revenues generated by the tax levied in this part shall be deposited in the state general fund.

67-2-234. It is the sense of the general assembly that the rate of tax should not be increased; exemptions, deductions or credits should not be decreased; and items of income should not be added to the tax base; except by a bill which has been considered and passed on three different days in each house of the general assembly and on third and final consideration has received the assent of three-fifths of all the members to which each house is entitled under the constitution of this state, when the respective speakers have signed the bill with the date of such signing appearing in the journal, and when the bill has been approved by the governor or otherwise passed under the provisions of the constitution of this state.

67-2-235. A credit shall be allowed against the tax levied by this part in an amount equal to the amount of tax paid pursuant to the provisions of Tennessee Code Annotated, Title 67, Chapter 4, Part 17. The credit, irrespective of the method of accounting employed by the taxpayer in keeping such taxpayer's books, shall be taken in the year in which the tax is paid.

The credit provided by this section shall be allowed only if the taxpayer furnishes to the commissioner all information necessary for the verification and computation of such credit as the commissioner may require. In no event shall any credit allowed by this subsection be refunded.

67-2-236. (a) Notwithstanding any provision of this part to the contrary, no later than thirty (30) days after the effective date of the act which enacts this part, each employer maintaining an office or transacting business within this state and making payment of any wages to a resident or nonresident individual, shall register with the department by completing and filing a registration information form prescribed by the commissioner. Prior to January 1, 2000, any person required to register for withholding may bring an action for declaratory judgment concerning the constitutionality or validity of the tax levied in this part in the Chancery Court of Davidson County. Appeal of any such action shall be taken directly to the supreme court.

(b) This subsection shall apply to employers who, after good faith and reasonable effort to do so, are unable to deduct and withhold tax from wages, and remit such amounts to the department, as required by section 67-2-222, during payroll periods which end on or before March 31, 2000.

(1) Notwithstanding any provision of this title to the contrary, the commissioner may waive, in the commissioner's sole discretion, upon written request by the employer, all or part of any tax, penalties or interest applicable to such failure to comply with section 67-2-222, if the failure is not the result of gross negligence or willful disregard of the law; provided that neither tax, penalties nor interest shall be waived if the taxpayer deducts and withholds tax from any employee's wages and does not timely remit such amount to the department as required by section 67-2-222.

(2) When the employer becomes able to deduct, withhold and remit tax as required by section 67-2-222, which shall be no later than the first payroll period which ends after March 31,

2000, the employer shall deduct, withhold and remit tax in such amounts so as to result, so far as practicable, in withholding from the employee's wages during the remainder of the calendar year the total amount required by subsection (a) of section 67-2-222. The method of determining the amount to be withheld shall be prescribed by rules or regulations issued by the commissioner; provided that the amount of withholding necessary to bring the employee current shall be spread substantially equally over all remaining payroll periods of the calendar year.

(3) During each payroll period for which the employer is unable to deduct and withhold tax, the employer shall provide a written notice to each employee stating that tax has not been withheld as required by law.

(4) When the employer begins deducting and withholding tax, the employer shall provide to each employee from whose wages tax is withheld, during each payroll period for the remainder of the calendar year, a written statement substantially identical to the following: "I was unable to begin withholding tax from your wages as of January 1, 2000, as required by Tennessee law. Had I done so, the amount withheld for each payroll period would have been \$[insert amount]. Because I was unable to do so, the amount which must be withheld and paid to the state during each payroll period for the remainder of the year is \$[insert amount]."

(c) Notwithstanding any provision of this part to the contrary, for any taxable year ending on or before December 31, 2000, "required annual payment," for purposes of section 67-2-219, means seventy percent (70%) of the tax shown on the return for the taxable year, or if no return is filed, seventy percent (70%) of the tax for such year.

(d) Notwithstanding any provision of this title to the contrary, the commissioner may waive all or part of any penalty imposed under this part and arising out of a taxable period ending on or before December 31, 2000, upon written request of the taxpayer, if the commissioner determines, in the commissioner's sole discretion, that the taxpayer has shown good and reasonable cause for the failure; provided that no penalty shall be waived if the failure is the result of gross negligence or willful disregard of the law.

SECTION 45. Tennessee Code Annotated, Section 67-4-2004(2)(B), is amended by deleting the words “corporation’s” and “corporation” wherever they appear and substituting instead the words “person’s” or “person”.

SECTION 46. Tennessee Code Annotated, Section 67-4-2004, is amended by deleting subdivision (5) in its entirety and substituting instead the following:

(5) “Compensation” means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

SECTION 47. Tennessee Code Annotated, Section 67-4-2004, is amended by adding the following new subsection:

() “General partnership” means a partnership in which all partners, as defined by state law, are fully liable for the debts of, or the claims against, the partnership. For purposes of this subsection, partners may be “fully liable” even though one or more persons or individuals dealing with the partnership have by contract agreed to limit their claims against one or more partners or against the partnership as a whole.

SECTION 48. Tennessee Code Annotated, Section 67-4-2004, is amended by deleting subdivision (9) in its entirety and substituting instead the following:

(9) “Gross Receipts”, “Total Gross Receipts”, “Receipts, and “Total Receipts” shall mean, within the context of the statute in which used, all receipts from whatever sources derived before any deductions, but not including actual sales returns and allowances.

SECTION 49. Tennessee Code Annotated, Section 67-4-2004, is amended by deleting subdivision (15) in its entirety and substituting instead the following:

(15) “Not-for-profit” means any person described in Sections 401, 408, 408A, 409, 501, 526, 527, 528, 529 or 530 of the Internal Revenue Code, as amended from time to time.

SECTION 50. Tennessee Code Annotated, Section 67-4-2004, is amended by deleting subdivision (16) in its entirety and substituting instead the following:

(16) "Person" or "taxpayer means every corporation, subchapter S corporation, limited liability company, professional limited liability company, registered limited liability partnership, professional registered limited liability partnership, limited partnership, cooperative, joint-stock association, business trust, regulated investment company, real estate investment trust, state-chartered or national bank, or state- or federally-chartered savings and loan association.

SECTION 51. Tennessee Code Annotated, Section 67-4-2004, is amended by deleting subdivisions (20), (21), and (22):

SECTION 52. Tennessee Code Annotated, Section 67-4-2006(a)(1), is amended by inserting the words and punctuation "(including any limited liability company treated as a corporation for federal income tax purposes)" after the word "purposes".

SECTION 53. Tennessee Code Annotated, Section 67-4-2006(a)(3), is amended by deleting the words and letters "(b), (c) and (d)" and substituting instead the words and letters "(b) and (c) of this section".

SECTION 54. Tennessee Code Annotated, Section 67-4-2006(a), is amended by deleting subdivisions (2), (4), and (5) in their entirety.

SECTION 55. Tennessee Code Annotated, Section 67-4-2006(a)(6), is amended by deleting the words "other than a decedent's estate" in subdivision (6).

SECTION 56. Tennessee Code Annotated, Section 67-4-2006(b)(1), is amended by deleting subdivision (F) in its entirety and substituting instead the following:

(F) Any gross premiums tax deducted in determining net earnings but taken as a credit against the excise tax under the provisions of Section 67-4-2009(1).

SECTION 57. Tennessee Code Annotated, Section 67-4-2006(b) is amended by deleting subitems (H) and (I) in subdivision (1) and subitems (J) and (K) in subdivision (2) in their entirety.

SECTION 58. Tennessee Code Annotated, Section 67-4-2007(a), is amended by deleting the language “six percent (6%)” and substituting instead “six and one-half percent (6.5%)”, and is further amended by deleting the last sentence thereof and by substituting the following new sentences:

Notwithstanding the fact that a person is not-for-profit, such person shall be subject to excise tax on all of its Tennessee net earnings to the extent such earnings constitute unrelated business taxable income as defined in Section 512 of the Internal Revenue Code or are otherwise subject to income taxes under Subtitle A of such Code. Notwithstanding the fact that a person is otherwise exempted from the excise tax, such person shall be subject to excise tax on all of its Tennessee net earnings that are attributable to any activities unrelated to and outside the scope of the activities that give it an exemption status.

SECTION 59. Tennessee Code Annotated, Section 67-4-2007(b), is amended by adding the following language:

A person doing business in Tennessee without incorporating, domesticating, qualifying or otherwise registering in Tennessee, or doing business in Tennessee while its charter, domestication, qualification or other registration is forfeited, revoked or suspended, shall not be relieved from filing a return and paying the excise tax levied by this part for each tax year that it does business in Tennessee.

SECTION 60. Tennessee Code Annotated, Section 67-4-2007, is amended by adding the following new subsections:

() For purposes of the excise tax levied by this part, a business entity shall be classified as a corporation, partnership, or other type business entity, consistent with the way the entity is classified for federal income tax purposes. A limited liability company or

other business entity which is disregarded as an entity separate from its owner for federal income tax purposes shall be similarly disregarded for excise tax purposes and included in the excise tax return filed by the owner provided that all requirements for exemption under section 67-4-2008(1) are satisfied. A limited liability company or other business entity which is owned by an individual and is disregarded as a separate entity from its owner for federal income tax purposes shall be similarly disregarded for excise tax purposes and treated as an individual for purposes of the tax imposed by chapter 2 of this title. A limited liability company or other business entity which is wholly owned by a single partnership, or entity treated as a partnership, and is disregarded as a separate entity from its owner for federal income tax purposes shall be similarly disregarded for excise tax purposes and treated as its single member for purposes of the excise tax and the tax imposed by chapter 2 of this title.

() Except for unitary groups of financial institutions and business entities that have been required or permitted to file excise tax returns on a combined, consolidated or separate accounting basis under Section 67-4-2014, each taxpayer shall be considered a separate and single business entity for Tennessee excise tax purposes and shall file its Tennessee excise tax return on a separate entity basis reflecting only its own business activities even though it may have filed a consolidated federal income tax return with other members of its unitary group. The federal taxable income computed on a separate entity basis excise tax return and subject to adjustments set forth in Section 67-4-2006 shall be the same federal taxable income that would have been computed on the taxpayer's federal return if it had been filed on a separate entity basis rather than a consolidated basis.

() Anything to the contrary notwithstanding, qualified subchapter S subsidiaries with an election in effect under Section 1361(b)(3)(B)(ii) of the Internal Revenue Code and qualified REIT subsidiaries described in Section 856(i) of said Code, which are

disregarded for federal income tax purposes and are included in the federal tax return filed by the owner(s), shall be disregarded for Tennessee excise tax purposes and shall be included in the excise tax return filed by the owner(s).

SECTION 61. Tennessee Code Annotated, Section 67-4-2008, is amended by deleting subitems (1) through (7) in their entirety and adding the following new subitems.

(1)(A) Notwithstanding any provision of law, except this section, to the contrary, (1) any subchapter S corporation, (2) any limited liability company, professional limited liability company, limited partnership, registered limited liability partnership, professional registered limited liability partnership, or other entity that is treated as a partnership for federal income tax purposes, or (3) any limited liability business entity which is disregarded as an entity separate from its owner for federal income tax purposes and which has as its single owner a person subject to the tax under this part or a not-for-profit entity, shall be exempt from the excise tax levied by this part; provided, however, that each such entity doing business in Tennessee that has an out-of-state corporate member or partner (other than a person exempt from the tax levied by this part) who would not otherwise be subject to the Tennessee excise tax shall, for each taxable period, either:

(i) timely file with the commissioner an agreement as provided in subdivisions (B) and (C) of this item, or

(ii) notwithstanding any other provision of law to the contrary, timely file an excise tax return and pay the tax levied by this part on a base consisting of all net income passed-through to the out-of-state corporate owner for federal income tax purposes. For this purpose, all applicable provisions of this part shall apply except that, the excise tax base shall be computed as set forth in this subdivision.

(B) An agreement under this subdivision shall be an agreement, on a form as may be prescribed by the commissioner, executed by the out-of-state corporate member or partner of a limited liability company, partnership, or other entity to:

(i) file a Tennessee excise tax return in the same manner as is required of any out-of-state corporation doing business in Tennessee and to compute and timely pay the excise tax levied by this part, and

(ii) to be subject to personal jurisdiction in this state for purposes of the collection of the excise tax and any penalty or interest related thereto.

(C) Any such entity that timely files an agreement as provided in subdivision (B) with respect to an out-of-state corporate member or partner for a taxable period shall be considered to have timely filed such an agreement for each subsequent taxable period. Any such entity that does not timely file such an agreement for a taxable period shall not be precluded from timely filing an agreement for subsequent taxable periods.

(D) An agreement as provided by subdivisions (B) and (C) of this item shall be considered timely filed for a tax period and for all subsequent tax periods if it is filed on or before the due date, including extensions, of the required excise tax return.

(E) Any excise tax paid for a tax year by a limited liability company, partnership or other entity pursuant to this subsection shall be considered a payment by the out-of-state corporate member or partner on account of the tax imposed by this part for such tax year and shall be recoverable, by off-set or otherwise, from the member or partner on whose behalf it was made.

(F) In the event that a limited liability company, partnership or other entity has more than one out-of-state corporate partners or members who elect to file an excise tax return under the provisions of this item, upon receipt of a written request properly executed by each out-of-state corporate member or partner, the commissioner may permit the corporations involved to file together a single excise tax return.

(G) For purposes of this item, “member” or “partner” includes any out-of-state corporation which, directly or indirectly through one or more other limited liability companies, partnerships or other entities, has an ownership interest in the limited liability company, partnership or other entity doing business in Tennessee.

(2) Entities described in section 67-4-2105(b).

SECTION 62. Tennessee Code Annotated, Section 67-4-2009(4)(A), is amended by deleting subdivision (ii) and substituting instead the following:

(ii) “Computer”, “computer network”, “computer software”, or “computer system” as defined by Section 39-14-601, and any peripheral devices, including, but not limited to, hardware, such as printers, plotters, external disc drives, modems, and telephone units, purchased by a taxpayer in the process of making the “required capital investment” in Tennessee described in Section 67-4-2109(c)(1)(C), if as a result of making such purchase and meeting the other requirements set forth in Section 67-4-2109(c), the taxpayer qualifies for the job tax credit provided therein.

SECTION 63. Tennessee Code Annotated, Section 67-4-2012, is amended by deleting the last sentence of subsection (b) in its entirety and substituting instead the following:

For this purpose, “property” includes a taxpayer’s ownership share of the real or tangible property owned or rented by any general or limited partnership, subchapter S corporation, limited liability company, or other entity treated as a partnership for federal tax purposes and not subject to the tax levied by this part and in which the taxpayer has an ownership interest either directly or indirectly through one or more such entities. The cost value or rental value of such property shall be determined from the books and records of the entity in which the taxpayer has an interest and such property shall be valued in accordance with the provisions of subsection (c) below.

SECTION 64. Tennessee Code Annotated, Section 67-4-2012, is amended by deleting the last sentence of subsection (e) in its entirety and substituting instead the following:

For this purpose, “compensation” includes a taxpayer’s ownership share of the compensation of any general or limited partnership, subchapter S corporation, limited liability company, or other entity treated as a partnership for federal tax purposes and not subject to the tax levied by this part and in which the taxpayer has an ownership interest either directly or indirectly through one or more such entities.

SECTION 65. Tennessee Code Annotated, Section 67-4-2012, is amended by deleting the last sentence of subsection (g) in its entirety and substituting instead the following:

For this purpose, “gross receipts” includes a taxpayer’s ownership share of the gross receipts of any general or limited partnership, subchapter S corporation, limited liability company, or other entity treated as a partnership for federal tax purposes and not subject to the tax levied by this part and in which the taxpayer has an ownership interest either directly or indirectly through one or more such entities.

SECTION 66. Tennessee Code Annotated, Section 67-4-2015(b)(1) is amended by deleting the first sentence thereof and substituting the following: “Every taxpayer, who has a combined franchise and excise tax liability of five thousand dollars (\$5000) or more for the current tax year, shall make four (4) equal quarterly estimated franchise and excise tax payments for its current tax year.

SECTION 67. Tennessee Code Annotated, Section 67-4-2015(d), is amended by adding the following new sentence:

Notwithstanding any provision of law to the contrary, a taxpayer that has timely made four (4) quarterly estimated franchise and excise tax payments, each of which equals at least twenty-five percent (25%) of the current year’s franchise and excise tax liability, shall not be assessed a deficiency penalty with regard to any quarterly payment.

SECTION 68. Tennessee Code Annotated, Section 67-4-2015(g), is amended by deleting in their entirety the words, numbers and punctuation “one hundred percent (100%)”

wherever they appear and substituting instead the words, numbers and punctuation “ninety percent (90%)”.

SECTION 69. Tennessee Code Annotated, Section 67-4-2105, is amended by deleting subsection (a) in its entirety and substituting instead the following:

(a) All persons doing business in Tennessee, including any limited liability company regardless of how it is treated for federal income tax purposes, or any person exercising the corporate franchise, except for those having not-for-profit status or otherwise exempt from the franchise tax under the provisions of subsection (b) below, shall pay to the commissioner of revenue annually a privilege tax in addition to all other taxes, the rate and measure of which are hereinafter set forth. The tax shall be paid for the privilege of doing business in Tennessee, and shall be in addition to all other taxes levied by any other statute. Notwithstanding any provision of law to the contrary, a not-for-profit entity shall be subject to the franchise tax on all of its Tennessee net worth or real or tangible personal property owned or used, as the case may be, that is attributable to activities subject to income taxes under Section 512 or any other provision of Subtitle A of the Internal Revenue Code. Notwithstanding any provision of law to the contrary, a taxpayer that is exempted from the franchise tax shall be be subject to such tax on all of its Tennessee net worth or real or tangible personal property owned or used, as the case may be, that is attributable to any activities that are unrelated to and outside the scope of the activities that gave the entity its exempt status.

SECTION 70. Tennessee Code Annotated, Section 67-4-2105, is amended by adding immediately after subsection (a) the following new subsections (b), (c), (d) and (e), and relettering the remaining subsections accordingly:

(b) There shall be exempt from the payment of the franchise tax levied under this part the following:

(1) Any corporation organized under the laws of the state of Tennessee whose sole expressed corporate purpose is for the furthering of industrial development in communities throughout the state, and doing matters related thereto, and whose stockholders receive no income other than interest or dividends on money invested in such corporation for constructing industrial buildings and whose officers receive no compensation;

(2) Corporations organized for the purpose of erecting, owning or operating a common meeting place for more than one (1) Masonic Lodge, more than one (1) Lodge of Odd Fellows, or similar lodges, and which corporations could obtain general welfare charters, and in which corporations all the stock is owned by lodges participating in the common temple or meeting place, regardless of the type of charter held by such operating corporations, except on income received by such corporations as rentals for use for commercial purposes;

(3) Any regulated investment company or investment fund organized as a unit investment trust taxable as a grantor trust under 26 U.S.C. §§ 671-677; provided, that not less than seventy-five percent (75%) of the value of the investments of such regulated investment company or unit investment trust shall be in any combination of bonds of the United States, state of Tennessee, or any county or any municipality or political subdivision of the state, including any agency, board, authority or commission of the state or its subdivisions;

(4) Federal credit unions, credit unions organized under the laws of other taxing jurisdictions, production credit associations organized under 12 U.S.C. § 2071 et seq., or merged associations under 12 U.S.C. § 2279c-1, production credit associations organized under title 56, chapter 4, part 4, or investment companies organized under title 56, chapter 4, part 3;

(5) Venture capital funds; provided, that for purposes of this part, a venture capital fund is a limited liability company, limited liability partnership, or limited partnership, formed and operated for the exclusive purpose of buying, holding and/or selling securities, including debt securities, primarily in non-publicly traded companies on its own behalf and not as a broker, and the capital of which fund is primarily derived from investments by entities and/or individuals which are neither related to nor affiliated with the fund. For purposes of this subdivision, the following provisions shall apply:

(A) I.R.C. Section 267(b) and (f) and any federal regulations applicable thereto, as they may be amended from time to time, shall be used to determine whether entities and/or individuals are “related”.

(B) “Affiliated” means entities that are part of an affiliated group as defined in I.R.C. Section 1504(a) and any applicable federal regulations thereto, as they may be amended from time to time.

(C) “Primarily,” as used in this subdivision, means over fifty percent (50%).

(D) “Non-publicly traded companies” means any business entity that is not a “publicly traded company”, as defined by subdivision (E) below.

(E) A “publicly traded company” is any company that is traded on:

(i) a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934 or exempted from registration under such Act by 15 U.S.C. 78f because of the limited volume of transactions;

(ii) a foreign securities exchange operating under principles analogous to a national securities exchange;

(iii) a regional or local exchange;

(iv) an interdealer quotation system that regularly disseminates firm buy or sell quotations by identified brokers or dealers by electronic means or otherwise; or

(v) on a secondary market or the substantial equivalent thereof, if taking into account all of the facts and circumstances, the owners are readily able to buy, sell or exchange their ownership interest in a manner that is comparable, economically, to trading on an exchange.

(6) Limited liability companies, limited partnerships, and limited liability partnerships if all of the following criteria are met:

(A) At least 66.67% of the activity of the entity is either farming or the holding of one or more personal residences where one or more of the members or partners reside. For purposes of this subdivision, the following provisions shall apply:

(i) "Farming" is the growing of crops, nursery products, timber or fibers, such as cotton, for human or animal use or consumption or the keeping of horses, cattle, sheep, goats, chickens or other animals for human or animal use or consumption or the keeping of animals that produce products, such as milk, eggs, wool or hides for human or animal use or consumption.

(ii) For this purpose, the activity of the entity shall be considered farming only if at least 66.67% of its income, including capital gains from the sale of assets used in farming, is derived from farming and at least 66.67% of its assets, valued at original

cost to the entity, are used by the owner or by the owner's lessee or sharecropper for farming. In the event that an asset's original cost to the entity cannot be determined, or there is no original cost to the entity, for purposes of this subdivision, the property shall be valued at its fair market value at the time of acquisition by the entity.

(iii) A "personal residence(s)", as the term is used in subdivision (A) above, shall include acreage contiguous to the dwelling.

(iv) Any entity that qualifies for franchise tax exemption under this subdivision (6), because of farming activity or because property has been used as a personal residence for at least five years, shall remain exempt for one year from the end of the calendar year in which it ceases to qualify for the exemption, but only with regard to property and transactions related to property that it held at the time that it last qualified for the exemption. Net worth resulting from sales and other transactions involving real, tangible, or intangible property acquired by the entity after it ceased to qualify for the exemption ("after-acquired property") shall be subject to the franchise tax. After-acquired property shall be included in the entity's franchise tax minimum measure. If the entity computes an apportionment formula, any after-acquired property and any compensation or gross receipts related to such property shall be included in the appropriate factors of such formula.

(v) In order to qualify as a personal residence, the dwelling unit must be occupied for personal use by partners or members of the entity for more days than it is rented to others who are not partners or members of the entity. For purposes of this subdivision, the provisions of I.R.C. Section 280A(d)(2) shall be used to define "personal use".

(B) At least ninety-five percent (95%) of the voting rights, capital interest or profits of the entity are owned either by natural persons who are relatives of one another or by trusts for their benefit. For this purpose, natural persons shall be considered "relatives" if, by blood or adoption, they are descended from a common ancestor and their relationship with each other is that of a first (1st) cousin or closer than that of a first (1st) cousin, or if they are spouses of one another.

(7) Limited liability companies, limited liability partnerships or limited partnerships existing on May 1, 1999, on which date and at all times thereafter met all of the following criteria:

(A) were at least ninety-eight percent (98%) owned by corporate members of an affiliated group as defined in 26 U.S.C. Section 1504(a);

(B) were formed and operated for the exclusive purpose of acquiring notes from members of such affiliated group, accounts receivable, installment sale contracts, and similar evidence of indebtedness obtained in the ordinary course of business by one or more members of such affiliated group;

(C) the assets of which directly or indirectly serve as security for third party borrowings or securitized indebtedness acquired by third parties;

(D) at least eighty percent (80%) of the income therefrom included in the income of a corporation doing business in Tennessee; and

(E) such income is subject to the applicable allocation and apportionment rules as found in this part.

(8) An entity that is treated as a partnership for federal income tax purposes and that is wholly owned, directly or indirectly, by a real estate investment trust which has an election in effect under Section 856(c)(1) of the Internal Revenue Code shall be exempt from the tax imposed by this part. In the event that such an entity is partly owned, directly or indirectly, by a real estate investment trust, the entity shall be exempt from the tax imposed by this part only to the extent that it is owned by a real estate investment trust. Such an entity shall file a franchise tax return as required by this part and compute the franchise tax as though it were not partially exempt. The franchise tax so computed shall then be multiplied by the percentage of ownership by entities that are not real estate investment trusts and the result shall be the franchise tax payable for by the entity for its tax year.

(9) Limited liability companies, limited partnerships and limited liability partnerships, all of whose members or partners are fully liable for the debts, obligations and liabilities of the entity, as provided in subsections (c), (d) and (e), and who have filed appropriate documentation to that effect with the secretary of state on or before the first day of the taxable year; provided, however, for tax years beginning before January 2, 2000, such documentation shall be filed on or before April 15, 2000; and further provided that this item (9) shall not apply to any limited liability company, limited partnership or limited liability partnership which is owned, in whole or in part, directly or indirectly, by a corporation other than a not-for-profit corporation. If an additional partner or member is admitted to the entity,

such partner or member must file the appropriate documentation with the secretary of state within sixty days of such person's admission. For purposes of this item, partners or members may be "fully liable" even though one or more persons or individuals dealing with the partnership or limited liability company have by contract agreed to limit their claims against one or more partners or members or against the partnership or limited liability company.

(10) An entity which satisfies both of the following requirements:

(A) It is classified as a partnership or trust in accordance with the provisions of 26 USC Section 7701 and the federal regulations and rulings promulgated thereunder or has elected to be treated as a real estate mortgage investment conduit (REMIC) under 26 USC Section 860D or as a financial asset securitization investment trust (FASIT) under 26 USC Section 860L; and

(B) The sole purpose of the entity, except for foreclosures and dispositions of the assets of foreclosures, is the asset-backed securitization of debt obligations, such as first or second mortgages, including home equity loans, trade receivables (whether an open account or evidenced by a note or installment or conditional sales contract), obligations substituted for trade receivables, credit card receivables, personal property leases treated as debt for purposes of the Internal Revenue Code of 1986, as amended, automobile loans or similar debt obligations. The term "trade receivables" as used in the above sentence is defined as obligations arising from the sale of inventory in the ordinary course of business.

(c)(1) Notwithstanding any provision of law to the contrary, the certificate of a limited partnership may provide that one (1) or more specifically identified limited partners, as named in the certificate of limited partnership, will be personally liable for all of the debts, obligations and liabilities of the limited partnership to the same extent as a general partner, and if so, each such

specifically identified limited partner shall be liable to the same extent as a general partner in a general partnership; provided, that:

(A) In order to be effective, each limited partner so identified must sign the certificate of limited partnership, or an amendment to the certificate of limited partnership containing this provision and such signature must be notarized. The certificate or amendment must contain the following two sentences in all capitalized letters: "THE EXECUTION AND FILING OF THIS DOCUMENT WILL CAUSE SUCH LIMITED PARTNER TO BE PERSONALLY LIABLE FOR THE DEBTS AND OBLIGATIONS OF THE LIMITED PARTNERSHIP TO THE SAME EXTENT AS A GENERAL PARTNER. PLEASE CONSULT YOUR ATTORNEY." The amendment or certificate may provide that it is only effective if all limited partners make and maintain such an election. In such case the certificate of limited partnership must affirmatively identify each general and limited partner of the limited partnership and state that such persons constitute all partners.

(B) Each such limited partner shall continue to be personally liable for all of the debts, obligations and liabilities of the partnership to the same extent as a general partner would be until (i) such limited partner withdraws from the partnership and the withdrawal is recorded with the certificate of limited partnership at the Secretary of State's Office or (ii) the certificate of limited partnership is amended to strike such limited partner's name as a limited partner electing joint and several liability or, if the certificate of limited partnership provides that all limited partners must elect joint and several personal liability for all of the debts, obligations and liabilities of the limited partnership if any limited partners are to be so liable, an amendment striking one limited partner who continues to be a limited partner shall strike all limited partners. Such document must be executed by the limited partner desiring to cease being so liable and promptly delivered to the general partner(s) and all other partners who are identified in the

certificate of limited partnership as being jointly and severally personally liable for the debts, obligations and liabilities of the limited partnership.

(C) Such limited partnership must have a written partnership agreement that sets forth in reasonable detail (i) the purpose of the limited partnership, (ii) the identity of each general partner; (iii) the scope of authority within the limited partnership of one or more of the general partners to incur debt or other obligations in the absence of limited partner approval; (iv) the fact that each limited partner electing to have joint and several liability will be liable for the all debts and obligations of the limited partnership however arising (contract, tort, or otherwise) or from the actions of the general partner(s) or other limited partners in furtherance of the limited partnership's business or other activity; (v) the fact that each limited partner may revoke his or her election to have joint and several unlimited liability and remain a limited partner; and (vi) the terms and conditions under which one or more general partners may be removed or the limited partnership dissolved and terminated.

(2) A limited partner who is identified in the certificate of limited partnership as being personally liable, always has the power but not necessarily the right, to revoke the election for joint and several liability for the limited partnership's debts and obligations by filing an amendment to the certificate of limited partnership stating that such limited partner revokes his or her election to be personally liable and will not be liable for any future debts, obligations and liabilities of the limited partnership and will not be liable for any future debts, obligations and liabilities of the partnership. Such amendment to the certificate shall be effective immediately except as provided in item (3) below.

(3) An amendment to the certificate of limited partnership filed pursuant to subdivision (2) is not effective against such parties reasonably relying upon such certificate until the passage of ninety (90) days from the filing of the amendment to the certificate of limited partnership. Notwithstanding the preceding, such limited partner or former limited partner will

continue to be liable for all of the debts, obligations and liabilities of the limited partnership incurred by the limited partnership while such limited partner assumed such liability, including, if applicable, the above described 90 day period.

(d)(1) Notwithstanding any provision of law to the contrary, the application of registered limited liability partnership may provide that one (1) or more specifically identified partners, as named in the application, will be personally liable for all of the debts, obligations and liabilities of the registered limited liability partnership to the same extent as a general partner of a general partnership; provided, that:

(A) In order to be effective, each partner so identified must sign the application of registered limited liability partnership, or an amendment to the application of registered limited liability partnership containing this provision and such signature must be notarized. The application or amendment must contain the following two sentences in all capitalized letters: "THE EXECUTION AND FILING OF THIS DOCUMENT WILL CAUSE SUCH PARTNER TO BE PERSONALLY LIABLE FOR THE DEBTS AND OBLIGATIONS OF THE LIMITED LIABILITY PARTNERSHIP TO THE SAME EXTENT AS A GENERAL PARTNER OF A GENERAL PARTNERSHIP. PLEASE CONSULT YOUR ATTORNEY." The amendment or application may provide that it is only effective if all partners make and maintain such an election. In such case the application of registered limited liability partnership must affirmatively identify each partner of the limited liability partnership and state that such persons constitute all partners;

(B) Each such partner shall continue to be personally liable for all of the debts, obligations and liabilities of the partnership to the same extent as a general partner of a general partnership until (i) such partner withdraws from the partnership and the withdrawal is recorded with the application at the Secretary of State's Office or (ii) the application of registered limited liability partnership is amended to strike such partner's name as a partner electing joint and several liability or, if the application of limited liability

partnership provides that all partners must elect joint and several personal liability for all of the debts, obligations and liabilities of the partnership if any are to be so liable, an amendment striking one partner who has not withdrawn and continues to be a partner shall strike all partners. Such document must be executed by the partner desiring to cease being so liable and promptly delivered to all remaining partners who are identified in the application of registered limited liability partnership as being jointly and severally personally liable for the debts, obligations and liabilities of the partnership to the same extent as a general partner of a general partnership.

(2) Such limited liability partnership must have a written partnership agreement that sets forth in reasonable detail (i) the purpose of the partnership, (ii) the identity of each partner; (iii) the scope of authority within the partnership of one or more of the partners to incur debt or other obligations in the absence of partner approval; (iv) the fact that each partner electing to have joint and several liability will be liable for the all debts and obligations of the partnership however arising (contract, tort, or otherwise) or from the actions of the other partners in connection with the partnership's business or other activity; (v) the fact that each partner has the power to revoke his or her election to have joint and several unlimited liability and remain a partner; and (vi) the terms and conditions under which one or more partners may be removed or the partnership dissolved and terminated.

(3) A partner who is identified in the application of a limited liability partnership as being personally liable, always has the power but not necessarily the right, to revoke the election for joint and several liability for the partnership's debts and obligations by filing an amendment to the application of limited liability partnership stating that such partner has revoked his or her election to be liable for the debts and obligations of the partnership and will not be liable for any future debts, obligations and liabilities of the partnership. Such amendment to the application shall be effective immediately except as provided in item (4) below.

(4) An amendment to the application of a limited liability partnership filed pursuant to §61-1-143 is not effective against such parties reasonably relying upon such application until the passage of ninety (90) days from the filing of the amendment to the application of limited liability partnership. Notwithstanding the preceding, such partner or former partner will continue to be liable for all of the debts, obligations and liabilities of the partnership incurred by the partnership while such partner assumed such liability.

(e)(1) Notwithstanding any provision of law to the contrary, the articles of a limited liability company may provide that one (1) or more specifically identified members, as named in the articles, will be personally liable for all of the debts, obligations and liabilities of the limited liability company and, if so, each such specifically identified member shall be liable to the same extent as a general partner in a general partnership; provided, that:

(A) In order to be effective, each member so identified must sign the articles, or an amendment to the articles containing this provision. The amendment or articles may provide that it is only effective if all members make and maintain such an election. In such case the articles must affirmatively identify each member and state that such persons constitute all of the members of the limited liability company;

(B) Each such member shall continue to be personally liable for all of the debts, obligations and liabilities of the limited liability company to the same extent as a general partner of a general partnership until (i) the member withdraws from the limited liability company or (ii) the articles are amended to strike such member's name as a member electing joint and several liability or, if the articles provide that all members must elect joint and several personal liability for all of the debts, obligations and liabilities of the limited liability company if any are to be so liable, an amendment striking one member who continues to be a member shall strike all members. Such document must be executed by the member desiring to cease being so liable and promptly delivered to any

remaining members who are identified in the articles as personally being jointly and severally liable for the debts, obligations and liabilities of the limited liability company.

SECTION 71. Tennessee Code Annotated, Section 67-4-2105(c), is amended by adding the following language:

A person doing business in Tennessee without incorporating, domesticating, qualifying or otherwise registering in Tennessee or doing business in Tennessee while its charter, domestication, qualification or other registration is forfeited, revoked or suspended shall not be relieved from filing a return and paying the franchise tax levied by this part for each tax year that it does business in Tennessee.

SECTION 72. Tennessee Code Annotated, Section 67-4-2106(a) is amended by deleting the words “in accordance with generally accepted accounting principles” and substituting instead the words “determined in accordance with subsection (b) below”.

SECTION 73. Tennessee Code Annotated, Section 67-4-2106, is amended by deleting subsection (b) in its entirety and substituting instead the following:

(b) For purposes of this section, for taxpayer’s filing on a separate entity basis, “net worth” is defined as the difference between a taxpayer’s total assets less its total liabilities computed in accordance with generally accepted accounting principles. However, if the taxpayer does not maintain its books and records in accordance with generally accepted accounting principles, net worth shall be computed in accordance with the accounting method used by the taxpayer for federal tax purposes, so long as the method fairly reflects the taxpayer’s net worth for purposes of the tax levied by this part. For taxpayers required by this part to file as a unitary group on a combined basis, “net worth” is defined as the difference between each such taxpayers’ total assets less its total liabilities computed in accordance with generally accepted accounting principles.

SECTION 74. Tennessee Code Annotated, Section 67-4-2106, is amended by adding the following new subsections:

() For purposes of the franchise tax levied by this part, a business entity shall be classified as a corporation, partnership, or other type business entity, consistent with the way the entity is classified for federal income tax purposes. Except for unitary groups of financial institutions and business entities that have been required or permitted to file franchise tax returns on a combined, consolidated or separate accounting basis under Section 67-4-2112, each taxpayer shall be considered a separate and single business entity for Tennessee franchise tax purposes and shall file its Tennessee franchise tax return on a separate entity basis reflecting only its own business activities even though it may have filed a consolidated federal income tax return with other members of its unitary group.

() Notwithstanding any provision of law to the contrary, qualified subchapter S subsidiaries with an election in effect under Section 1361(b)(3)(B)(ii) of the Internal Revenue Code and qualified REIT subsidiaries described in Section 856(i) of said Code, which are disregarded for federal income tax purposes and are included in the federal tax return filed by the owner(s), shall be disregarded for Tennessee franchise tax purposes and shall be included in the franchise tax return filed by the owner(s).

SECTION 75. Tennessee Code Annotated, Section 67-4-2107(b), is amended by adding the following sentence:

Provided, however, if the taxpayer, other than any taxpayer required by this part to file as a unitary group on a combined basis, does not maintain its books and records in accordance with generally accepted accounting principles, the value of the interest shall be computed in accordance with the accounting method used by the taxpayer for federal tax purposes, so long as the method fairly reflects the value of the taxpayer's ownership interest for purposes of the tax levied by this part.

SECTION 76. Tennessee Code Annotated, Section 67-4-2108(a), is amended by deleting subdivision (1) in its entirety and substituting instead the following:

(1) Except for entities treated as partnerships for federal tax purposes (excluding S corporations), the measure of the tax hereby levied shall in no case be less than the actual value of the real or tangible property owned or used in Tennessee, excluding exempt inventory. The sole franchise tax measure for entities treated as partnerships for federal tax purposes (excluding S corporations) shall be net worth computed in accordance with the provisions of section 67-4-2106.

SECTION 77. Tennessee Code Annotated, Section 67-4-2108(a), is amended by deleting subdivision (3) in its entirety and substituting in its place the following:

(3) For purposes of this section, “property” shall be valued at cost less accumulated depreciation in accordance with generally accepted accounting principles; provided, however, if the taxpayer, other than any taxpayer required by this part to file as a unitary group on a combined basis, does not maintain its books and records in accordance with generally accepted accounting principles, the value of the property shall be computed in accordance with the accounting method used by the taxpayer for federal tax purposes, so long as the method fairly reflects the property’s value for purposes of the tax levied by this part. For this purpose, “property” includes a taxpayer’s ownership share of the real or tangible property owned or rented by any general or limited partnership, subchapter S corporation, limited liability company, or other entity treated as a partnership for federal tax purposes and not subject to the tax levied by this part and in which the taxpayer has an ownership interest either directly or indirectly through one or more such entities. In cases where part or all of the property is rented, the value of rented property used shall be determined by multiplying the net annual rental by the following multiples:

	Multiples
(a) Real property	8
(b) Machinery and equipment used in manufacturing and processing ...	3

(c) Furniture, office machinery and equipment	2
(d) Delivery or mobile equipment	1

SECTION 78. Tennessee Code Annotated, Section 67-4-2111(b), is amended by deleting subdivision (2) in its entirety and substituting instead the following:

(2) For purposes of this section, “property” shall include a taxpayer’s ownership share of the real or tangible property owned or rented by any general partnership, or person treated as a general partnership for federal income tax purposes, in which such taxpayer has an ownership interest. “Property” shall also include a taxpayer’s ownership share of the real or tangible property owned or rented by any limited partnership, subchapter S corporation, limited liability company or other entity treated as a partnership for federal income tax purposes, in which the taxpayer has an ownership interest, directly indirectly through one or more such entities, and which is not doing business in Tennessee and, therefore, is not subject to Tennessee franchise tax. The cost value or rental value of such property shall be determined from the books and records of the entity in which the taxpayer has an interest and such property shall be valued in accordance with the provisions of subsection (c) below.

SECTION 79. Tennessee Code Annotated, Section 67-4-2111(e), is amended by deleting subdivision (3) in its entirety and substituting instead the following:

(3) For purposes of this section, “compensation” shall include a taxpayer’s ownership share of the compensation of any general partnership, or person treated as a general partnership for federal income tax purposes, in which such taxpayer has an ownership interest. “Compensation” shall also include a taxpayer’s ownership share of the real or tangible property owned or rented by any limited partnership, subchapter S corporation, limited liability company or other entity treated as a partnership for federal income tax purposes, in which the taxpayer has an ownership interest, directly or

indirectly through one or more such entities, and which is not doing business in Tennessee and thus is not subject to Tennessee franchise tax.

SECTION 80. Tennessee Code Annotated, Section 67-4-2111(g), is amended by deleting subdivision (2) in its entirety and substituting instead the following:

(2) For purposes of this section, “gross receipts” shall include a taxpayer’s ownership share of the gross receipts of any general partnership, or person treated as a general partnership for federal income tax purposes, in which such taxpayer has an ownership interest. “Gross receipts” shall also include a taxpayer’s ownership share of gross receipts of any limited partnership, subchapter S corporation, limited liability company, or other entity treated as a partnership for federal income tax purposes, in which the taxpayer has an ownership interest, directly or indirectly through one or more such entities, and which is not doing business in Tennessee and thus is not subject to Tennessee franchise tax.

SECTION 81. Tennessee Code Annotated, Section 67-4-2119, is amended by adding at the end of the section the following new language:

A taxable entity that is incorporated, domesticated, qualified or otherwise registered to do business in Tennessee but is, or has become, inactive in Tennessee, or whose charter, domestication, qualification or other registration is forfeited, revoked or suspended without the entity being properly dissolved, surrendered, withdrawn, canceled or otherwise properly terminated, shall not be relieved from filing a return and paying the franchise tax (which shall be no less than the one hundred dollar (\$100) minimum) levied by this part for each tax year.

SECTION 82. Tennessee Code Annotated, Section 67-4-2106, is amended by adding the following new subsections immediately following subsection (b):

(c) In addition to the franchise tax levied by this part, any corporation that has a Tennessee charter or certificate of authority or that is doing business in Tennessee and

is treated as a subchapter S corporation for federal income tax purposes shall pay an annual fee equal to fifty dollars (\$50) per shareholder to the department of revenue with the minimum fee being three hundred dollars (\$300) and the maximum fee being three thousand dollars (\$3,000).

(d) Notwithstanding anything to the contrary, for a subchapter S corporation that has a Tennessee charter or certificate of authority but was completely inactive in Tennessee and owned no property in Tennessee during its last fiscal year, the fee imposed by subsection (c) above shall be three hundred dollars (\$300) regardless of the number of shareholders.

(e) The fee imposed by subsection (c) or subsection (d) above shall be due the fifteenth (15th) day of the fourth (4th) month following the close of the S corporation's tax year and shall be paid notwithstanding the fact that the S corporation is doing business in Tennessee in corporate form but without a charter or certificate of authority, or the fact that the S corporation's charter or certificate of authority has been forfeited, revoked or suspended without being properly dissolved or withdrawn.

(f) The commissioner of revenue has the power to establish procedures, promulgate rules and regulations and publish forms for the payment of the fee imposed by subsections (c), (d) and (e) of this section.

SECTION 83. Tennessee Code Annotated, Section 67-4-2109, is amended by adding the following new subsection (e) immediately following subsection (d) and relettering the remaining subsections accordingly:

(e) A credit for the fee paid to the secretary of state or to the department of revenue pursuant to Section 48-247-103(d) or Section 67-4-2106(c), (d) or (e) shall be allowed against the tax levied by this part. The credit shall be taken on the franchise tax return filed for the tax year in which the fee was paid. Any unused credit shall not be subject to refund or to carryover to a subsequent tax year.

SECTION 84. Tennessee Code Annotated, Section 7-88-103(1) is amended deleting the second sentence and substituting the following:

In the event the state rate for sales and use tax should change after a municipality has made application under this chapter or during the period any municipality is receiving an apportionment pursuant to this chapter, the department of revenue, after consultation with the commissioner of finance and administration, shall adjust the base tax revenues to reflect such change in tax rate so as to provide for substantially the same economic benefit to the municipality and substantially the same overall allocation of revenue between the municipality and the state as is provided in this chapter;

SECTION 85. There is hereby appropriated a sum sufficient to implement, administer and enforce the provisions of this act.

SECTION 86. (a) Except as provided in subsections (b) and (c), if any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

(b) If the Tennessee Flat Tax Law of 1999 or the application thereof to all persons is held invalid, then:

(1) sections 2 through 23, 26, 27 and 29, of this act are declared to be invalid and void;

(2) all of Tennessee Code Annotated, Title 67, Chapter 6, Parts 2 and 3, as it existed immediately before the effective date of sections 2 through 23, 26 and 27, shall be revived in its entirety on the first day of the month immediately succeeding the effective date of the court's order; and

(2) all of Tennessee Code Annotated, Title 67, Chapter 2, Part 1, as it existed immediately before the effective date of section 29, shall be revived in its entirety effective January 1 of the year of the effective date of the court's order.

(c) if the Inheritance Tax of 1999 or the application thereof to all persons is held invalid, then all of Tennessee Code Annotated, Title 67, Chapter 8, Parts 2 through 4, as it existed immediately before the effective date of section 30 shall be revived in its entirety immediately upon the effective date of the court's order.

SECTION 87. The commissioner is authorized to promulgate rules and regulations in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5, to implement and administer the provisions of this act. Such rules, to the extent deemed necessary by the commissioner for timely implementation of this act, shall include public necessity and emergency rules.

SECTION 88. (a) Sections 2 through 23 shall take effect on March 1, 2000, the public welfare requiring it.

(b) Sections 26 and 27 shall take effect on May 1, 2000, and shall apply to distributions made on or after that date, the public welfare requiring it.

(c) Sections 28 and 82 shall take effect on January 1, 2000, the public welfare requiring it.

(d) Section 29 shall take effect on January 1, 2000, but the provisions of Title 67, Chapter 2, Part 1, shall remain in effect for tax years ending on or before December 31, 1999, the public welfare requiring it.

(e) Sections 30, 31, 32, 33, 35 and 36, shall take effect on January 1, 2000, and shall apply to decedents dying on or after January 1, 2000, the public welfare requiring it. The provisions of Tennessee Code Annotated, Title 67, Chapter 8, Parts 2 through 4, are repealed effective January 1, 2000, but shall continue to apply to decedents dying on or before December 31, 1999, and to the administration of such decedents' estates, the public welfare requiring it.

(f) Sections 34, 37 and 38, shall take effect upon becoming law and shall apply to all estates open at that time, the public welfare requiring it.

(g) Sections 39 through 43 shall take effect on January 1, 2000, and shall apply to gifts made on or after that date, the public welfare requiring it.

(h) Sections 44, 50, 54, 57 through 65, 69 through 71, 74, 76 through 81, and 83, shall take effect on January 1, 2000, and shall apply to tax years beginning on or after that date, the public welfare requiring it.

(i) Sections 45 through 49, 51, 52, 53, 55, 56, 66, 67, 68, , 72, 73 and 75 shall take effect upon becoming law, and shall apply to tax years beginning on or after July 1, 1999, the public welfare requiring it.

(j) All other sections of this Act shall take effect upon becoming law, the public welfare requiring it.